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AMERICAN MILITARY POLICY AND NATIONAL SECURITY

IN the discussion leading to the Pact of Paris the phrase "war as an instrument of national policy" became the basis for consideration of international affairs. The fundamental question at present to be raised is whether national policy has not now become an instrument of war.

This is no mere rhetorical device to catch the ear and the eye. It is a statement of fact in the light of which otherwise confusing phenomena become quite intelligible. For example, economic policies which, judged by the accepted criteria of economics, border on the insane become altogether rational if considered as quasi-military measures. Governmental controls of the press, the radio, the church, the school likewise are explicable by reference to the obvious fact that under modern conditions nearly all phases of life must be subordinated to the exigencies of war. The extension of political authority, especially military authority, into virtually every domain of human relations, is of profound significance. In Germany, Japan and Italy, the concept of the totalitarian state and the concept of the totalitarian war are inextricably connected; in fact, it is difficult if not impossible to determine which is cause and which effect. The relentless pressure of the authoritarian states and of their concepts of economics, international law and political ethics is having results of far-reaching importance in all spheres of life and economy in the democratic nations. Every accepted tenet of pre-war society is being challenged

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with noisy belligerence not only in the press and on the air and in diplomatic correspondence, but by the much more serious measures of economic autarchy which in part grow out of preparation for war. It is difficult to see how, in particular, the cherished heritage of Anglo-Saxon political freedom can be maintained in a world so thoroughly dominated by war and the war mentality. There is serious doubt that democratic states can successfully wage war against authoritarian powers, and there is even more serious doubt that democracy can survive war, even if successfully waged. In any case, there probably will be, in the nature of things, such fundamental compromises between political freedom and military necessity that a post-war society will be revolutionary in character.

"War", of course, is here used as a relative term. Heretofore war customarily began with a declaration of hostilities; no such formalities now seem necessary, as two good-sized wars are going on without legal status. Furthermore, preparations for war have assumed such magnitude as to raise the question whether peace exists in more than name. In truth, the world may now be said to be in various stages of mobilization for war, of which armed hostilities are merely the most aggravated form. During mobilization, whether it be called rearmament or preparedness or what you will, military considerations obviously take precedence. Some states have established in times of so-called peace a degree of war-time controls which would have delighted the military autocrats of the Great War, and demands for similar controls are being pressed elsewhere. Imports and exports are being restrained and raw materials are being allocated in the interests of war industries. Labor organizations have been suppressed, and labor has been conscripted. Quotas, boycotts, exchange controls, tariffs, excises, and the like are preliminary trading-with-the-enemy acts. Food is rationed. Taxation and military expenditures have reached astronomical proportions. Women and children are incorporated in the military machine. The civilian population is kept in a febrile state of emotional excitement which hitherto only war could produce. War is now frankly a process of attrition, and the race against exhaustion

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is under way. Standards of living are depressed to an alarming degree; one favorite slogan is "guns not butter". Paradoxically enough, the unrepaired ravages of world-wide depression provide momentum rather than deceleration to the mad whirl. Hence national resources are conserved or expended with one end in view, national self-preservation or aggrandizement. The concept of the nation in arms has become all-embracing.

This may be in some respects an exaggerated and distorted description of the world in which we live. But it holds enough of reality to warrant the careful attention of the student of international affairs. In fact, it is difficult to see how any study of international relations can proceed without recognition of the prime fact that some governments, at least, look upon war rather than peace as the normal law of life. This appears to be the truth, however tragic. To some, the prevailing situation is a dilemma inherent in modern society. Others reject such fatalism and believe that courageous statesmanship offers an escape. All are agreed that continuance along the present path will be calamitous in one way or another.

In short, military policy dominates statecraft, completely in some states, partially in others. But military policy is not yet beyond conscious control; in so far as it can be intelligently directed, success may be achieved in avoiding or, at least, in mitigating what appears to be the impending catastrophe of universal militarization. The extent to which military policy may be subordinated to statecraft, instead of vice versa, will of course be conditioned by a variety of factors—historical, geographic, ethnographic, economic, psychological. But some definition of national military requirements and their objectives is imperative if a semblance of order is to be brought out of the prevailing chaos—what Mr. Roosevelt recently has called international anarchy.[1] The difficulties of obtaining a frank definition in each instance will be proportional to the prevailing degree of mobilization. Of the so-called Great Powers it might be said that the United States represents one extreme,

[1] The term is not new, of course. It was used fifteen years ago by English writers to describe pre-war Europe and the armaments race.

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Japan the other. In some countries it is quite possible that the momentum of war, including preparation for war, is so great that it cannot be retarded, much less stopped. But there is no reason to believe that so advanced a stage has been reached as yet in the United States. Certainly recent and prospective increases in American military and naval expenditures, however great, do not irrevocably commit the American people to any definitive course of action, although they well may compromise freedom of choice. It is of the utmost importance, therefore, that the United States reëxamine its whole policy of national defense in the light of historical traditions, the prevailing policies of other powers, and the basic elements in international relations.

Military policy is of the essence of statecraft. To be sure, there will always be differences of opinion, even among professional soldiers and seamen, as to degrees, ways and means. But there will be substantial agreement that national defense is an inherent part of the national economy as well as one of the primary responsibilities of statesmanship. It was so recognized by Adam Smith in *The Wealth of Nations.* The authors of *The Federalist,* writing a century and a half ago, had a profound distrust of large armaments, which they considered an impediment to economic progress, a menace to liberty, and altogether unnecessary to the United States. Nevertheless, with their not infrequent prescience, they saw clearly enough that: "Safety from external danger is the most powerful dictator of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant upon a state of continued danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have the tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free".[2] The problem of rep-

[2] The quotation is from Hamilton, in No. VIII. Similar striking paragraphs might be cited from Madison and Jay. All three were impressed with the geographical isolation of Great Britain and its effects upon British institutions. The Channel was then a formidable moat against invaders. How much greater, they said, was the barrier of the Atlantic.

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resentative governments everywhere and always is to have the maximum of security with the highest degree of freedom, to make the military the servant of national policy, not national policy the servant of the military.

American history has provided bold strokes of statesmanship designed to promote national security through clean-cut definitions of policy. The whole dogma of isolation was from its very inception largely a matter of military expediency. It represented a conscious attempt to utilize the geographical position of the United States as the strongest element in our national defense. It was sound strategy as well as sound politics.[3] In *Common Sense* and *The Crisis,* written in 1776 and 1777, Thomas Paine stated clearly that independence, national unity, and non-intervention in European affairs were in our military interest. As Washington put it twenty years later, because of our "detached and distant situation" we might well "defy material injury from external annoyance". The Farewell Address—in the drafting of which Madison, Hamilton and Jay participated—gave classic expression to the thought of contemporary American statesmen of all shades of political opinion. Weighing carefully the alternatives of armaments, alliances, a kind of collective security within the British Empire, and reliance upon a unique geographical position, the choice of the Fathers, at least for their day, was isolation based upon natural strategic advantage.

The decision of 1817 to demilitarize the Canadian frontier was another noteworthy instance of military policy designed to promote the national security. It is now too readily assumed that this was an easy step to take because of the community of interest between the United States and Canada. Such was not the case. At the time of the Rush-Bagot Agreement the Canadian border bristled with forts, guns, troops and ships of war. For more than a century and a half it had been the scene of the most savage and sanguinary warfare. On both sides of the line there were suspicion and hatred deeply rooted in religious, political, linguistic, and nationalistic differences and

[3] Dr. Alfred Vagts, in his *History of Militarism* (New York, 1937) has called the Atlantic the greatest of Maginot Lines.

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passions. The decision to disarm was based not merely upon good will, but upon well-calculated considerations of economic and military expediency.

The Monroe Doctrine likewise might be interpreted as a shrewdly conceived policy of national defense. It was not solely attachment to republican institutions which determined the principles laid down in Monroe's Message of December 2, 1823. It was as well a deep-set conviction that, so far as possible, we should not countenance the establishment or re-establishment in the Western World of potential bases of military or naval operations against the United States. In the words of the Message, we served notice upon the powers of Europe—and later upon those of the rest of the world—that "we should consider any attempt on their part to extend their system to this hemisphere *as dangerous to our peace and safety*".[4] To make it emphatic, almost the same phraseology was repeated elsewhere in the Message. There are few national policies more clearly conceived in military self-interest and few which have been more uniformly successful.

There is, therefore, no indication that Americans are less likely than others to defend their vital interests, provided always that there be some reasonable agreement upon what those interests are. It is doubtful if generalized terms like "rights" and "defense" and "honor" and "international law" will move the United States to warlike action; we have learned in the bitter school of experience that the pursuit of abstractions leads to trouble. But a clearly-thought-out national policy, resulting from adequate debate, may confidently expect unified national support. The comparative geographical isolation of the United States, its practical immunity from invasion, the continental extent of its territory and natural resources, and its potential military power make the formulation of such a policy relatively less difficult than in the case of any other nation. We can afford to make it clear that there are certain things for which we propose to fight, as well as certain things for which we do not propose to fight. In some measure, this is what we have done. The Monroe Doctrine

[4] The italics are mine.

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with its various corollaries leaves little doubt, for example, that we would fight to preserve the territorial and political integrity of Canada or Mexico. In the more recent "neutrality legislation" [5] we have enumerated a number of things for which we definitely will not fight—the right to export arms and ammunition, to travel on belligerent ships, to arm our merchantmen, to transport munitions in American vessels, and the like. To most of us none of these rights seems worth the risk of war. It is altogether praiseworthy thus to clarify the position of the United States in a bewildering world, and it is difficult to see why the effort has been greeted with so much ridicule and abuse by the sophisticated. The impulses which produced the neutrality laws are powerful and in the best American tradition, and emphasis upon technical defects in the legislation should not obscure the popular resolve that lies behind it. There is nothing craven in a policy which attempts to solve problems on their merits before they become enveloped in the fog of prestige.

With the foregoing notable exceptions, it may be doubted whether the United States has any officially recognized military policy. A major-general of the United States Army recently has said that the only consistent objectives of the War and Navy departments are more and bigger appropriations. That is an exaggeration, for the General Staff has plans for contingent war. Some of these are purely defensive, others are said to be founded on the last war—that is, a large expedi-

[5] Regarding the word "neutrality" which has a great variety of definitions, I am borrowing a paragraph from a "Report of the Committee on the Maintenance of American Neutrality" (1937) published in *Plan Age*, volume III, p. 232:

> "Despite the other connotations which it may bear . . . the word 'neutrality' will be used . . . only in the sense of a nation's remaining at peace while other nations are engaged in war. It will be used with no particular reference to the traditional insistence of the United States upon 'neutral rights'—the historical attitude that belligerents should take care that their warfare does not infringe upon the commercial life and habits of nations outside the conflict. Nor will 'neutrality' carry the implication of impartiality, connoting an endeavor to balance carefully the award of favors and penalties to the warring factions."

This is the sense in which, in general, "neutrality" will be used in this paper.

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tionary force landed on friendly soil, supplied from friendly ports, and transported in all probability in friendly ships. With the progressive failure of naval disarmament, the policy of the Navy becomes of greater significance. Although the Mahan school of aggressive strategy is said to be in partial eclipse even in the Navy itself, there remains a good deal of room for clarification of the strategic responsibilities of the fleet. Whether any of the prevailing plans of the Army or Navy is realistic and acceptable to the American people cannot be decided on the available evidence. In the nature of the case many decisions have to be made in secret, however important their consequences. Furthermore, there apparently is lack of intelligent liaison between the several branches of the government which are charged with international policy. For example, how far are the reciprocal trade treaties (a genuine effort to ease prevailing economic tensions) consistent with our military policy and with the military policies of other nations? Does our merchant marine program fit into our naval plans or vice versa? Who, if anyone, is charged with the accumulation of stocks of raw materials—the sinews of war—not normally produced in the United States? Clarification of these and other points is going to be necessary no matter what our course of conduct—continental defense, insistence upon "freedom of the seas" and other rights not specifically renounced, collective action, or the strictest sort of neutrality. It is certain that the adequacy of armaments can be measured only in relation to the strategic and political liabilities assumed for them. No one knows this better than the military and naval experts.

The haphazard way in which fateful military programs may be formulated has recently been revealed in the case of the portentous decision made in 1916, but subsequently modified at the Washington Conference, to make the United States the foremost naval power in the world. Speaking at St. Louis, February 3, 1916, President Wilson said: "There is no other navy in the world that has to cover so great an area of defense as the American Navy, and it ought, in my judgment, to be incomparably the greatest navy in the world". What the President intended to say was "incomparably the most ade-

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quate navy in the world"—a very different thing. On the train later his attention was called to the discrepancy between the speech as prepared and the speech as delivered; whereupon Wilson replied that he was "intoxicated by the exuberance of his own verbosity".[6]

Between the Monroe Doctrine on the one hand and the neutrality legislation on the other is a vast twilight zone in which we have no policy at all or policies vaguely defined. Some venerable American diplomatic principles, such, for example, as the open door in the Far East, will need critical reconsideration in the light of new circumstances. Of even greater importance are questions which have not yet been propounded but which are certain to raise ominous heads with the first declaration of hostilities in either Europe or the Far East. Perhaps foremost among these is the status of aircraft, both military and commercial in war time. This question cannot be dodged by the United States, inasmuch as the Pan-American Airways already maintain a transoceanic service to the doors of China and will shortly be flying American mail and passenger planes across the Atlantic. Military aircraft in the next war may play a rôle transcending in sinister possibilities that played by the submarine in the crucial years 1914-1918. American statesmen may be excused for not having solved without resort to war the problems raised by the submarine. But if armed planes are used for commerce-raiding and other military purposes, no extenuating circumstances may be pleaded for lack of diplomatic foresight and preparedness. Who is to determine the national course of action vis-à-vis such contingencies? And upon what principles, since no legal precedents exist and since a legalistic approach failed to secure peace in 1917? Should events simply be allowed to take their course?

The gravest danger, perhaps, is procrastination now and improvisation later. Suppose that by some rare prescience Woodrow Wilson had had before him a critical study of the

[6] See Ray Stannard Baker, *Woodrow Wilson, Life and Letters*, volume VI (Garden City, 1937), p. 29. It might be added that there is a difference of opinion concerning the relative strategic responsibilities of the American and, say, the British navies.

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laws of neutrality [7] and their applicability or lack of applicability to changing conditions of commerce and warfare (an amplification, let us say, of Mr. Lansing's doubts concerning the principle of visit and search as it involved armed merchantmen and the submarine). Suppose, also, that there had been some consideration in the autumn of 1914 or even earlier of the right of Americans to travel on belligerent ships in torpedo-infested war zones. Would our debate with the British and German governments have been different in character and spirit? To take another sort of case: Suppose the United States had carefully reconsidered some years ago the wisdom of maintaining military and naval outposts in China and had decided to withdraw our ships and our troops. Would the decision have been easier or more difficult than it is now, while a major Sino-Japanese war is being waged and after an American gunboat has been bombed from the skies? [8] It is imperative that, as far as possible, policies be formulated before overt acts occur and before national prestige becomes involved; only in such circumstances can they be considered on their merits. Then, whatever the decisions, it might be said that they represented deliberate and rational processes of choice. As another writer has put it, "It is one thing, very wise and honorable, in advance of war, to lay down a policy . . . of relinquishing certain neutral rights which may be more embarrassing than they are worth while for a nation; it is another thing, impossible for a great people, still proud and emotional, in the midst of a situation to yield acknowledged rights at the point of the sword or a torpedo." [9]

It will be objected, with some justification, that national policies cannot be formulated for unforeseen contingencies. Certainly the very recent official and public attitude toward the neutrality legislation seems to bear out the contention. But this does not prescribe the rule that a policy of drift should be

[7] "Neutrality" is here used in the technical legal sense, not as on p. 7 *supra*.

[8] The question is posed without any attempt to suggest what the answer should be.

[9] Samuel Flagg Bemis in *The Yale Review*, December 1935, pp. 226-227.

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the course chosen in respect of military affairs. The number of unforeseen circumstances is not infinite—the United States is not likely, for example, to have war with France or Czecho-Slovakia. And only the most remote sort of chance would bring hostilities with the British Empire. The science of politics—indeed life itself—is based upon analysis and appraisal of contingent probabilities as distinguished from far-fetched possibilities. At present prospective wars are limited in number and their character is dimly defined and acted upon by American military and naval authorities in conjunction with the Department of State. Military and naval strategy in relation to national policy does not now, and will not, proceed on mere improvisation for wholly unpredictable contingencies, some of which are impossible and some absurd. Military policy in some respects does and will control the view taken of contingencies. Hence the scientific and painstaking accumulation, coördination and interpretation of relevant facts are necessary unless there is to be a surrender to forces of chance and irrationality. The processes of research and interpretation are indispensable to the planning and control of military and naval policies.

For example, do we wish to fortify the Aleutian Islands and Alaska as air bases? If so, with reference to what larger purpose? Is the answer to be in terms of military strategy alone or with some relevance to the more far-reaching political questions which such fortifications are certain to raise in the Pacific? And, in any case, with what officials, responsible or irresponsible, is the decision to rest? In short, is it not true that an examination of these questions might have the important effect of averting crises or at least of altering, in the interest of the United States, the character of crises which may arise with Japan or Russia? It may be said without reasonable fear of contradiction that no such strategic problems may be resolved without the most serious repercussions in the civilization of the United States in its broader phases. Again, is there available to Congress, to the executive branches of the government, and to the American people any calm appraisal of our position in the Pacific, in the Caribbean, and in the Atlantic, with due con-

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sideration of those historical, economic, ethical, psychological, legal and military phenomena which should have weight in determining what is the common defense and the general welfare?

If such an inquiry is to be made—as it must be made—into the basic assumptions of American military policy, the question of method and responsibility arises. It is inevitable, of course, that ultimate decisions will be taken (many of them in secret) by the military and the executive. The broad outlines of national conduct must be circumscribed by Congress. The active participation of the Department of State and of the Army and Navy will be required in all deliberative procedure. Nevertheless, official and responsible agencies of government do not operate in a vacuum. Every policy of theirs must, or at least should, be formulated with relevance to the basic conditions of American life and thought. The wider, the deeper and the more factual the knowledge at their disposal, the more practical and realistic is their course of action likely to be. After all, official authorities do not claim omniscience any more than citizens in general or students of public affairs in particular. The President and Congress, for example, have frequently shown in the past an altogether admirable desire to obtain information and other assistance from those whose perspective and sources of knowledge are different, although not necessarily better. By legal and moral right government officials speak and act only for the nation of which they are a part, and it is the nation which ultimately must give sanction to their official decisions. National policy cannot be separated from the interests and ideals for which the people as a whole are willing in a crisis to pledge their lives and fortunes. In the long run, no policy can last which does not command a large measure of popular support founded upon an enlightened public opinion. Competence to judge fundamental questions overflows the boundaries of governmental agencies into the larger body politic and more especially into the realm of scholarship.

The subject of investigation here proposed has at the moment indubitable intrinsic significance in foreign relations and

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domestic policy, and according to all indications it will have increasing importance for the future. Although the inquiry would have a frankly utilitarian purpose, it should be conducted according to the most rigorous canons of factual scholarship and empirical thinking. If scientific investigation be valuable in itself and if, in addition, it render the public service of aiding in the clarification of national policy in a highly explosive situation, it may be said to be justified by any standards. Pressing as domestic problems may be, all are overshadowed by war, and none is fraught with greater significance for American life than the nature of military and naval policy in its bearing upon larger questions of American statesmanship. Is the statement, amplification and clarification of the problem too large a task for American intelligence? In particular, is participation in this operation of research and formulation foreign to the activities and duties of the American scholar?

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UNEMPLOYMENT PREVENTION THROUGH UNEMPLOYMENT COMPENSATION

THE most distinctive characteristic of the American approach to unemployment insurance is the attempt to combine the objectives of unemployment prevention and unemployment relief in the same legislation. Such a dual objective is to be found in practically all of the fifty-one American compensation laws now in operation.[1] The emphasis on unemployment prevention or employment stabilization, in the employer reserve plan developed in Wisconsin, is generally recognized.[2] This plan is fully incorporated in the laws of only two states, though it is partially provided for in five other state laws.[3] It is not so clearly apparent in those laws which provide for a pooling of contributions, but the majority of these pooled fund states also aim at the objective of unemployment prevention through a device known as merit rating.

Merit rating may be defined as the provision for variations from the basic contribution rate for each individual employer in accordance with some measure of his employment experi-

[1] This includes 48 state laws and laws for the District of Columbia, Alaska and Hawaii. These will be referred to hereafter as 51 state laws.

[2] Even though it is essential to a complete discussion of the topic of this article, no effort will be made to make a distinction between "unemployment prevention" and "employment stabilization" and the terms will be used almost interchangeably. It will be assumed that there exist definite possibilities for the "prevention of unemployment" or the "stabilization of employment" by activity on the part of individual employers or groups of employers.

[3] Wisconsin and Nebraska are the two states with the individual reserve plan; Indiana, Kentucky and South Dakota provide for pooling of one sixth of the contributions collected under the law; Oregon for pooling of .5 per cent of payrolls; Vermont gives the employer a choice between the reserve plan and contributing to the pooled fund. However, neither Nebraska nor Wisconsin has a pure reserve plan, since both provide for building up a pooled fund from interest payments of delinquents, earnings of the fund, and from accounts of employers who go out of business.

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ence. Of the pooled fund states, only Pennsylvania and Maryland fail to make provision for merit rating. Nine additional states provide that the administrative agency study the subject with a view toward developing a plan.[4] Of the remaining thirty-four states, twenty-seven provide for what is known as automatic merit rating plans, since the variations to be permitted and the conditions under which they are granted are fully set out in the law.[5] Seven states have adopted what may be designated as commission rating, since the power to determine the variations to be granted and conditions under which they are granted are delegated to the administrative agency.[6] With somewhat the same objective as merit rating, five state laws provide for experimentation with guaranteed employment plans for promoting employment stabilization.[7] These plans generally include an advance guarantee of employment for a minimum number of hours per week for a stated number of weeks each year. They may be considered as alternatives to merit rating.

The Employer Reserve Plan

The employer reserve plan is based on the theory that the primary objective of a compensation system is that of prevention of unemployment and that this objective can be achieved by holding each individual employer responsible for his own unemployment. If one accepts these basic premises, the details of the system will appear to be quite logical. The plan provides for the maintenance of each employer's contribution in a separate account. To this account contributions are credited

[4] Georgia, Hawaii, Maine, Massachusetts, Mississippi, New York, North Carolina, Rhode Island, Virginia.

[5] Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, West Virginia, Wyoming.

[6] Alabama, Alaska, District of Columbia, Montana, Nevada, Vermont, Washington. It should be noted also that West Virginia, listed in the automatic group, grants to the administrative agency the power to vary rates if those developed under the automatic rating plan prove inequitable.

[7] California, Idaho, Indiana, Minnesota, Wisconsin. The last named state has, however, repealed the provision of the law permitting such plans.

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and against it benefit payments are debited. As the reserve in the account increases, in terms of percentage of payroll, the rate of contribution is lowered. As the size of the reserve decreases, the rate is raised.[8] In other words, rate variation depends upon the financial condition of each employer's account.

This same technique, when superimposed upon a pooled fund, constitutes automatic merit rating. The pooled fund, however, is based upon the principle of community responsibility for unemployment. The advocates of merit rating believe that through it both stabilization of employment and effective unemployment relief can be achieved. The primary purpose of this paper is to examine this belief; to see whether it is possible to combine two contradictory principles and achieve the aims of each.

Analysis of Automatic Merit Rating Plans

The Colorado law, to begin with an example of an automatic merit rating plan, provides that when an employer's account shows a balance on hand[9] amounting to from 7.5 per cent to 10 per cent of payrolls, his rate of contributions is reduced to 1.8 per cent; if the reserve is over 10 per cent, the rate is reduced to .9 per cent. Most laws establish a bottom rate of .9 per cent or 1 per cent but six laws waive contributions entirely if the reserves reach a specified percentage of payroll.[10]

[8] The Wisconsin law provides for decreased rates if the reserve equals at least five times the largest amount of benefits charged in any one of three preceding years; if the reserve amounts to 7.5 per cent to 10 per cent of payrolls, the rate becomes 1 per cent; if the reserve is 10 per cent or over, the rate of contributions is reduced to zero. If the reserve is less than 7.5 per cent and the benefits paid during the preceding year exceeded contributions, the rate is increased by .5 per cent of payrolls over the last preceding rate or over the standard rate, whichever is higher, up to a maximum of 4 per cent.

[9] This is purely a bookkeeping calculation; actually, of course, the funds are pooled for the purpose of paying benefits.

[10] Illinois, Utah and Delaware, when the reserve reaches 12.5 per cent; Idaho and Missouri when reserves amount to 15 per cent; and Connecticut when the reserve is 17.5 per cent. Three of the employer reserve plans also permit contributions to be waived entirely. Wisconsin, of the individual reserve states, and Kentucky and Indiana of the states in which part of the fund is pooled also permit rate reductions to zero, Wisconsin when the reserve

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It should be remembered, of course, that these rate reductions cannot go into effect until at least five years after the first payment of contributions.[11]

Generally speaking, the merit rating laws provide for rate increases as well as reductions. However, there are some laws which provide for rate reductions but not increases.[12] The increases authorized by other states do not range as high as the downward variations.[13] This can mean but one thing. If the basic rates in the laws are calculated to pay all benefit claims which are likely to arise in the state, the effect of these rate variations will be a tendency toward depletion of reserves and the ultimate insolvency of the system. Actually, the basic rates established are too low in some of the industrial states and possibly too high in certain rural states.[14]

Since rate variations always are based upon the ratio of reserves to payrolls, it is possible that reserve ratios will increase and rates decline when funds are most needed for benefit payments. The formula for calculating the reserve ratio calls for the subtraction of all past benefits from all past contributions, the remainder to be divided by the average annual

reaches 10 per cent of payroll, Kentucky and Indiana when it amounts to 17 per cent.

[11] The Social Security Act requires, as a condition of granting offsets against the federal payroll tax, a period of two years' contribution collections prior to payment of benefits (Section 903 a) and three years' compensation experience prior to granting rate reductions (Section 910 a).

[12] This is true of the following seven pooled fund states: California, Connecticut, Florida, Idaho, Minnesota, New Hampshire and North Dakota. It is also true of the employer reserve laws of Nebraska, the combination pooled fund-employer reserve plan of South Dakota and the alternative pooled fund-employer reserve plan of Vermont.

[13] In sixteen of the twenty automatic merit rating states which provide for increases, the maximum rate is 3.6 per cent. This rate goes into effect only when benefits have exceeded contributions for 60 preceding months or all past experience, whichever period is most advantageous to the employer. The Ohio, Arkansas, Delaware and Michigan laws permit rates to go as high as 4.0 per cent.

[14] Data developed by the Committee on Economic Security (published as a supplement to the Committee Report) indicated a wide variation in unemployment rates from state to state. In 1930 the range was from 13.9 per cent in Michigan to 3.9 per cent in South Dakota. It is obvious that the almost uniform rate of contributions fails to take these wide variations into account.

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payroll of three or five preceding years, whichever is higher.[15] The rate, therefore, depends as much on changes in payrolls as it does on the amount of reserves on hand. This makes rate reductions possible simply because of reductions in payroll. During a depression period, employers may reduce payrolls sharply and possibly become beneficiaries of rate reductions. Contributions also are based on payrolls, so that income will be reduced as benefit requirements increase. It is possible, also, that sharp increases in employment may result in increased rates because of the effect on the reserve ratio. The averaging of payrolls over a period of years is an attempt to guard against such developments, but it is not likely to be fully effective.

The effect of rate variations on the solvency of the pooled fund cannot be predicted accurately. Too many factors are unknown. It is clear, however, that because of the substantial rate reductions authorized in most laws, the failure to provide equivalent increases, and the formula for calculating reserves, there is considerable danger that some states will witness the insolvency of their systems when unemployment compensation might be of the greatest usefulness. Another accentuating influence which may be mentioned is the provision found in some laws permitting employers to make voluntary contributions to their reserve accounts.[16] Obviously this will be done only when the employer is on the borderline of a rate classification and can achieve a substantial reduction in contributions by a small voluntary contribution.

The fund-depleting tendencies of merit rating are recognized in most unemployment compensation laws. Sixteen of the automatic merit rating laws provide that no reductions shall be granted from the basic rate unless the total assets of the fund exceed the total benefits paid within the last preceding

[15] This is the formula in sixteen of the twenty-seven automatic rating laws; the remaining states have much the same formula with a significant variation in seven of these states in that only contributions in excess of a certain amount are counted toward the reserve.

[16] Connecticut, Michigan, Missouri, New Mexico, Utah of the automatic group; also Indiana, Kentucky, Nebraska, Wisconsin of the reserve states.

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year; and that no rate shall be less than 1.8 per cent or 2 per cent unless such assets exceed twice the benefits paid within the preceding year.[17]

A second protective feature found in some laws is one which excludes a part of the employer's contribution in the calculation of his reserve ratio.[18] The effect of this is to delay the process of building up reserve ratios. However, there are nine automatic merit rating states which do not have these provisions designed to protect, to some extent, the solvency of the pooled fund.[19] To the extent that these protective devices are effective, they will nullify rate reductions that would otherwise accrue and possibly arouse resentment on the part of employers who fail to receive their reward for "merit".

It is easy to foresee considerable difficulty in the administration of automatic merit rating plans. A dual bookkeeping system is required since a record must be made of payments to and from the account of each employer and each employee. The charging of benefits to employers' accounts will be no easy matter when the benefits are paid to a person who has worked for a number of employers. Nor will the actual calculation of reserve ratios and the consequent determination of rates be a small task. Employers will also have to be informed as to the amounts credited and debited from their accounts. Lengthy explanations will no doubt be in order when em-

[17] The Arizona law reads: "No employer's rate for the period of twelve months commencing January 1 of any calendar year shall be less than 2.7%, unless the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, exceed the total benefits paid from the fund within the last preceding calendar year; and no employer's rate shall be less than 2% unless such benefits at such time were at least twice the total benefits paid from the fund within such last preceding year."

This same provision is found in the laws of Arkansas, Colorado, Florida, North Dakota and Wyoming. In the following states 1.8 per cent is set: Iowa, Kansas, Louisiana, Minnesota, New Jersey, New Mexico, Oklahoma, South Carolina, West Virginia; one state, Illinois, sets such minimum rate at .9 per cent.

[18] The laws of Arizona, Arkansas, Connecticut, Michigan, New Mexico, North Dakota, Tennessee, Utah, Washington, West Virginia and Wyoming contain provisions to this effect.

[19] California, Delaware, Idaho, Illinois, Missouri, New Hampshire, Ohio, Texas, Utah.

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ployers find themselves charged with benefits for men who have long since left their employment. All in all, the cost of administering a merit rating plan will be substantially greater than that of a straight pooled fund law.

This matter of administrative cost cannot be ignored. While it is true that the federal government provides money for state administration, and that the Social Security Board considers the cost of proper administration of the various types of laws in making its grants to the states, employers, employees and the public generally will evaluate state administration largely on the basis of the ratio of administrative costs to benefits paid out. Higher costs based on supposed stabilization characteristics of certain laws will be difficult to justify unless results are easily demonstrable. Moreover, though the administrative expenses come from the federal government, in the first instance, it is rather easy to see a connection between these grants and the 10 per cent of the federal payroll tax which the federal government retains.

It is too early to determine the relative costliness of the different systems since only recently was any substantial number of laws in full operation. It is quite apparent that, other conditions being similar, the straight pooled fund system will be least costly to administer. Most costly, if it is administrable at all, is the combination of pooled fund and employer reserve plan. The commission rating plans will also entail high cost of administration if they are interpreted to call for a classification of industries according to employment experience and rate variations by industries as well as individual establishments. The employer reserve plan and the pooled fund merit rating plan should prove equally costly to administer, if the other provisions of the law are similar.

Commission Rating Plans

The seven states that delegate the power to develop rate variations to the agency charged with administration may avoid some of the difficulties of the automatic merit rating laws. Other difficulties are involved, however. First of all, the laws are not very clear in specifying the type of rate varia-

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tions to be developed. Generally the commission is given authority to "classify industries, employers and/or occupations with respect to the degree of employment hazard of each" and to "apply any form of rating or classification system which . . . is best calculated to rate individually the unemployment risk . . . for each employer or group of employers and to encourage the stabilization of employment." [20] The law specifies what the average rate of contributions shall be and also sets a minimum rate.[21] The commissions must establish rate variations which yield a total income corresponding to the average rate of contributions. This, in itself, is not an easy task.

It is more difficult to determine whether the variations are meant to apply to individual employers or to industries or to both. There is an implication in the commission rating laws that employers will be grouped into industries according to their employment hazard. This will require a classification of industries according to a different principle than any heretofore used. The hazards of unemployment differ widely as between rubber boots, rubber raincoats and rubber cement, all of which use the same material and are often found in the same classification. Substantial variations also exist between men's shoes and ladies' footwear. After the difficulty of establishing a proper classification system has been surmounted, the commissions will be subject to constant pressure for separate classifications by employers who have a better experience than the group to which they are assigned. The commissions may be forced to adopt an automatic scheme in self-defense. However, if the basic rate adopted is adequate to pay the scale of benefits provided in the law, there should not be the tendency for a steady depletion of the fund as under some of the automatic merit rating plans.

[20] This is substantially the provision of the Alabama, Alaska, District of Columbia, Montana, Nevada and Washington laws.

[21] Vermont is the only state which fails to establish a basic rate or a minimum.

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Guaranteed Employment Plans

Guaranteed employment plans were at one time considered a promising form of merit rating.[22] This promise has apparently failed to materialize since only four states make provision for such plans.[23] Wisconsin, the only state which has had experience with the plan, has already abandoned it.

The Social Security Act permits a guarantee of only forty calendar weeks of thirty hours to qualify for the tax offset provisions of the Act.[24] For each additional week guaranteed, one weekly hour may be deducted. Moreover, an individual employee's guarantee may commence after a probationary period of twelve or less calendar weeks. Despite this liberality, Wisconsin found the difficulties so great in administering the plan that practically every employer attempting to come under its scope soon abandoned the scheme. Thereupon, the provision authorizing guaranteed employment plans was repealed. A careful reviewer of the Wisconsin experience concluded that " few states should attempt to provide for guaranteed employment plans." [25] His advice seems to have been taken.

Merit Rating and Unemployment Prevention

It is generally assumed that merit rating rewards employers directly in proportion to their success in preventing unemployment.[26] But it must be remembered that the rate variations

[22] See *Report of Committee on Economic Security*, p. 22.

[23] California, Idaho, Indiana, Minnesota; it is an alternative to the pooled fund plan in California, Idaho and Minnesota.

[24] Section 910 of Social Security Act.

[25] R. L. Hibbard in *Law and Contemporary Problems*, vol. III, No. 1, January 1936. The only exceptions suggested by Mr. Hibbard would be in " the case of States not having effective merit rating, where it is desired to provide such merit rating for a strictly limited group of usually stable employers " (p. 94).

[26] Three examples of this assumption: (1) " It assures that his contribution for unemployment compensation will reflect his own success or failure in giving steady jobs." Elizabeth Brandeis in *Law and Contemporary Problems*, January 1936, p. 57. (2) " At the same time, the merit rating provisions provide some incentive towards stabilization by ranging the contribution rates according to *the amount each employer contributes to the total volume of unemploy-*

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actually depend on the status of each individual employer's reserve ratio. This, in turn, depends on many factors, some within the control of the employer, some clearly beyond his control.

Merit rating offers equal rewards for practices which cannot be characterized by the term "merit" and for those that can be so characterized. It is sometimes within the power of the employer to arrange the lay-off of those employees who have not established rights to any substantial amounts of benefits. Extreme sharing of work may also be a means of maintaining reserve ratios. This offers possibilities for rate reductions since the declining payrolls increase the reserve ratio. It is even possible to increase the reserve ratio by slashing wage rates. These are only suggestive of the various possible effects of merit rating.

Some factors determining the reserve ratio and the rate of contributions are clearly outside the control of the employer. If the employer happens to be a coal mining company in an isolated community, the chances of unemployed workers finding other jobs may be very small and, consequently, the drain on reserves great. Another employer may find his reserve fully intact because he happens to be in a larger size community where his employees are re-absorbed in other lines of activity. One employer may curtail his staff sharply during the early days of a depression and find most of them employed elsewhere long enough to void any rights they may have had to draw benefits from his account.[27] Another employer may maintain his labor force well into a depression and find that all are forced to draw benefits when finally laid off. Certainly chance, as well as design, must play a great part in determining which

ment." Daniel L. Goldy in *State Government*, May 1937, p. 96. (3) Merit rating "whereby after a few years of experience with the system, employers will be classified according to their rate of unemployment under a system of differentiated contribution rates." R. Gordon Wagenet in *National Municipal Review*, May 1937.

[27] If the former employee works for a substantial period or earns a certain amount of wages from a new employer, the latter becomes liable for a certain number of weeks or a certain amount in benefits. This period of liability may be sufficient until the employee is rehired once more by a third employer.

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employees will draw benefits. In short, the relationship between "rate reductions" and "merit" is far from perfect.

The method of charging benefits against the employer's account accentuates the accidental character of the relationship between the cause of unemployment and the responsibility fixed by law. Benefits are usually charged against the most recent employers in inverse chronological order of employment.[28] In some states only the most recent and next most recent employers are charged with benefits. In these states the original employer may escape any charges against his account.[29] Michigan and Missouri charge benefit payments to the last employer's account only, permitting all previous employers to escape charges.

A more basic criticism of merit rating is that no heed is taken of the fact that it is more difficult to stabilize employment in some lines of activity than in others. Under merit rating all employers are placed in the same category, whether they are in the banking business, manufacturing coffins, or manufacturing ladies' footwear. The result will be that in certain industries employers with very poor employment records, considering the hazards of the industry and the experience of other employers in the same line of activity, will be able to maintain fairly substantial reserves and perhaps be rewarded with rate reductions. An employer in another industry, where the hazard is great, may with considerable effort and cost achieve substantial improvement in employment stability, yet find that his reserves have been substantially depleted and his rate increased as his reward. Because of the maximum rate limitations in the law, a fellow employer who made no effort to stabilize may be rewarded with the same rate of contributions. Such a situation, which will by no means be rare under merit

[28] This is the case in California, Colorado, Connecticut, Delaware, Florida, Iowa, Kansas, Louisiana, Minnesota, New Jersey, Ohio, Oklahoma, South Carolina and Texas—of the automatic merit rating states; in Nebraska, Vermont, Washington of the commission rating states; and in Indiana, Kentucky, Wisconsin, Vermont and Nebraska of the reserve and partial reserve states.

[29] Of automatic merit rating states: Arizona, Arkansas, Illinois, New Hampshire, New Mexico, North Dakota, Tennessee, Utah, West Virginia and Wyoming, also Oregon and South Dakota of the partial reserve states.

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rating, is inequitable; it is not calculated to stimulate efforts at stabilization in those industries where employment stabilization is most needed.

It is possible that the states with commission rating will develop variations which will take into account the relative hazards of the different industries. Such seems to be the implication of the laws, though it is by no means clear. Considerable difficulties lie in the way of such a task but, if accomplished, a sounder rating system will result than that of the automatic merit rating plans.

Merit Rating and Interstate Competition

Because merit rating plans have been developed on a state basis without any requirements as to uniformity, further inequities will develop. Wide variations in contributions will prevail even for employers with exactly the same reserve ratio. Some states provide for .9 per cent contributions for reserves of over 10 per cent; other states require as high as 2 per cent contributions for the same ratio.[30] If one takes into consideration the competition between employers in states with and without merit rating, it is quite possible that employers in the same industry will have taxes levied varying as much as 3 or 4 per cent of payrolls. Granted that the effects of tax variations have frequently been exaggerated, such substantial differences may have serious consequences in certain industries.

The possibility of sharp variation in costs to employers in different states must appear a bit confounding to those who justified federal intervention in this area on the ground that individual states could not act because of the fear of placing their employers in an unfair competitive position. The immediate effect of Title IX, it is true, was to provide almost uniform taxes throughout the entire United States.[31] This

[30] Illinois .9 per cent for example, while neighboring Michigan calls for 2 per cent; New Jersey .9 per cent, New Hampshire 2 per cent. Other illustrations could be cited.

[31] All of the laws with the following exceptions provide for rates equalling 90 per cent of the federal rates; the following call for 2 per cent in 1937: District of Columbia, Michigan, New Hampshire (2 per cent through September 30, 1937; 1.8 per cent rest of year), Wisconsin; the following set a rate of 3 per cent in 1938: District of Columbia, Michigan, New York.

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uniformity may be undesirable from the standpoint of the variations in the volume of unemployment of the different states. But merit rating on an individual state basis nullifies this uniformity without any recognizable relationship to the volume of unemployment. Perhaps it can be justified on the ground of experimentation. Is it necessary, however, to develop a chaotic tax system in order to experiment with various types of state laws?

The Analogy from Workmen's Compensation

It was noted above that merit rating was a technique developed in connection with the employer reserve plan. It may be further traced back from the employer reserve plan to workmen's compensation insurance where, it is generally assumed, it has stimulated the reduction of accidents.

Merit rating in workmen's compensation insurance is superimposed on a system of industry rates, not on a state-wide rate as in unemployment compensation. The industry rates, known as the manual rates, are designed to bear the cost of the liabilities incurred by the industry. The term merit rating covers two types of variations from these manual rates, one known as schedule rating, the other as experience rating. Schedule rating is based on the theory that the employer can so organize his place of business as to reduce the number and severity of accidents. If he has machines guarded, doorways unencumbered, elevators with new cables, he is given a lower rate than another employer without these protective devices. Experience rating is a device for reflecting actual accident experience in the charges on particular employers. Regardless of plant set-up, if an employer has succeeded in having a better accident experience during the past five years than the average for the industry, he is given a lower rate than the manual rate. By the same token, however, his rate becomes higher than the manual rate if his experience is poorer than average. It is essential to merit rating that the variations work both ways and that the manual rate bear the industry costs.[32]

[32] Certain industries, of course, fail to carry costs for a considerable period of time. This occurs under state as well as private insurance, sometimes for political reasons.

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Workmen's compensation insurance rates were an outgrowth of employers' liability insurance. Workmen's compensation legislation did not create a new liability; it merely made specific a liability which already existed under the common law. Workmen's compensation legislation did not socialize this liability by providing that all employers should share equally the burden of paying the benefits provided by law. The requirement that employers insure their risks was merely for the purpose of protecting the injured workers. This is shown by the fact that most laws permit the employer the right of self-insurance under certain conditions.[33] The insurance rates which existed under employers' liability were carried over to workmen's compensation with such adjustments as were called for by the schedule of benefits provided in the various laws.

Had the workmen's compensation laws provided for exclusive state insurance, it might have been possible, if thought desirable, to establish one state-wide contribution rate. Only in a few jurisdictions, however, was state insurance prescribed, even there with the alternative of self-insurance.[34] In the remaining states, insurance is provided by private carriers, though some states have provided state insurance to compete with private carriers.[35] Wide variations in rates according to the hazards of different employments are inevitable under a competitive insurance system with possibilities of mutual and self-insurance.

It is doubtful whether the workmen's compensation experience with merit rating justifies its applicability to unemployment compensation. Accidents can clearly be allocated to a particular plant, while unemployment cannot be localized. Even if one does not accept this distinction, one would hardly urge the granting of equal rewards for accident prevention in mercantile establishments and in coal mining. The workmen's

[33] In all, about 41 state laws permit the employer to become a self-insurer.

[34] Only Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia and Wyoming provide exclusive state funds. Of these, two states permit self-insurance.

[35] The following states have competitive insurance systems: Arizona, California, Colorado, Idaho, Michigan, Maryland, Montana, New York, Oklahoma, Pennsylvania.

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compensation experience clearly calls for consideration of the employment hazards of different industries in calculating rate variations.

Suggestions from European Experience

The American states may be proud in the knowledge that merit rating is not a foreign importation. They may take satisfaction in adopting a more optimistic approach to the problem of unemployment. For indeed, no European country with unemployment insurance has ever adopted a plan which can be compared with merit rating. Such variations in contribution rates as have been developed have been on a very minor scale and sometimes with other objectives than the stabilization of employment.

A paragraph of the Austrian unemployment insurance law of 1920 authorized the Ministry of Labor to levy taxes on manual and white collar workers in proportion to the burden they imposed on the fund.[36] The objective was not employment stabilization, but what was thought to be a more equitable distribution of the costs of the system. Pursuant to this provision, a schedule of three unemployment classes was established; a class of high risks composed mainly of the building industry and the hotel and restaurant industries; a class of average risks; and a class of low risks which included such groups as bank and insurance clerks. The variation in contributions did not prove successful. The financial result was negligible. Moreover, experience indicated that the basic assumptions underlying the schedule were unsound. White collar workers, for example, were unemployed for longer periods of time. The schedule of contribution classes was soon abandoned.[37]

In England several efforts have been made to stimulate the stabilization of employment through the working of the insurance system. The original law fixed contributions at the same

[36] Since the employer paid a tax of equal amount, the variations affected him as well.

[37] It is interesting to note that the workers' organizations were opposed to those variations on the ground that they were a sign of lack of solidarity.

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level for all employers but made provision for separate accounts, and "it was contemplated that there should then, in the light of experience, be a revision and differentiation of contributions by trades." [38] Another section of the original law provided for refunding part of the employer's contribution for men continually employed by him during each insurance year. This bears some similarity to the guaranteed employment plans in a few of our compensation laws. The British act also provided for a remission of contributions where work was systematically spread in order to avoid unemployment. These provisions were dropped in the 1920 act because they "had caused more trouble than they seemed worth".[39]

The British Act of 1920 adopted a different approach to the problem of employment stabilization. It was based on the theory that if certain industries were offered the prospect of saving money by maintaining their own unemployment funds, they would be stimulated to reduce unemployment. Consequently Section 17 provided that industries might withdraw from the national fund under certain conditions. These conditions were, in substance: Benefits no less favorable than the general scheme; reduced contributions to the fund from the Treasury; coverage of entire industries as defined by the Ministry of Labor; coverage of all employees in the industry; and approval of the plan by substantial majorities of employers and employees. The schemes were to be approved by the Ministry of Labor and administered by a joint board of management.

British industries were slow to develop schemes and, unlike American employers, the major employers' associations were opposed to this provision of the law. Only two schemes were approved before this plan was abandoned.[40] These two schemes,

[38] "The Past and Present of Unemployment Insurance in England", Beveridge, W. H., *Barnett House Papers No. 13* (London, 1930).

[39] *Ibid.*, p. 17.

[40] An investigation as to the reasons for the failure to develop special schemes indicated the following as the most important obstacles: (1) The difficulty of defining an industry; (2) the movement of workers from industry to industry; (3) the difficulty of meeting the requirement of joint submission by representatives of the majority of employers and employees; and (4) the financial

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covering the banking and insurance industries, have worked out reasonably well, but British opinion was strongly against further efforts along this line.[41] The Blanseborough Committee, which investigated this question among others, opposed the idea of separate industry schemes, partly on the ground that industries were interrelated and partly because of the practical difficulties resulting from the movement of workers from industry to industry.[42] Pursuant to this recommendation, further contracting out was prohibited by the law of 1927 though the separate schemes for the banking and insurance industries were allowed to remain in force.

The only type of variation in contributions provided for by the German unemployment insurance law was for the reduction of rates by districts, and even this was never made operative.[43] Failure to adopt a scheme of industry or employer variations was based on the conviction that neither cyclical nor technological unemployment could be eliminated by that method. It was conceded that some degree of seasonal stabilization might be achieved by individual employers but it was believed that gains in one plant would be largely at the expense of increased fluctuations in other establishments.[44]

It must not be concluded from the failure of European countries to direct their insurance system toward unemployment prevention, that there is complete satisfaction with the situation. In England, particularly, numerous students have been concerned over the failure of the pooled fund with uniform contributions to stimulate any interest in unemployment prevention. Miss Gilson concluded from her study that the present system of taxation will have to be overhauled and variations developed in order to provide incentives for employ-

hazards in contracting out. See *Report on Administration of Section 18 of the Unemployment Insurance Act of 1920*, by the Ministry of Labor, 1923, pp. 18-19.

[41] For a summary of these plans, see Gilson, M. B., *Unemployment Insurance in Great Britain* (New York, 1930).

[42] Great Britain, Minister of Labor, *Unemployment Insurance Committee Report*, vol. I, pp. 52-56.

[43] Its objective was to stimulate efficiency in the administration of the funds.

[44] Carroll, M. R., *Unemployment Insurance in Germany* (2d rev. ed. Washington, 1930), p. 83.

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ment stabilization.[45] Sir William Beveridge believes that "measures of some kind must be taken to make trades which have excessive unemployment . . . set their houses in order and pay, until they do so, for their own reserves of labor."[46] He appears to be concerned, however, with a better organization of the labor market rather than the reduction of seasonal, cyclical or technological unemployment. His only concrete suggestion is that industries marked by excessive unemployment be taken out of the state system and be forced to bear the entire cost of paying benefits.

Some Possible Alternatives to Merit Rating

The development of a sound plan for stimulating the reduction of unemployment or the stabilization of employment requires, first of all, a precise definition of the objectives which are thought to be embodied in those terms. In the absence of such definition a discussion of alternative plans must be considered primarily as a method of arriving at a common understanding of what should be the objectives of the plan.

If workmen's compensation experience is to serve as a precedent for merit rating, it would appear to call for the establishment of basic industry rates according to an industry classification based on employment hazards. On the basis of perhaps eight years of compensation experience, individual employers would be given a lower or higher rate depending upon whether their employment record was better or worse than the average industry experience. The difficult problem is that of obtaining an accurate measure of employment experience. The financial test has been shown to be seriously defective. Probably the best test is a comparison of changes in the average number of man hours of employment of each employer with changes in the industry average.[47] This sort of

[45] Gilson, *op. cit.*, p. 377.

[46] *Barnett House Papers No. 13*, p. 27.

[47] A moving average could be used in each case by dropping off one year as each new year's experience was added. This would, of course, penalize employers and industries whose total volume of employment was declining year after year.

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plan would require reporting of man hours of employment and for this reason alone would not be popular. It would also result in high rates of contributions for certain industries and still higher rates for particular employers. But if the theory of merit rating is sound, the plan should prove a powerful incentive for the prevention of unemployment. If it is felt that industry variation in contribution rates is an undesirable development in our compensation systems, the plan could still be retained in substance. The individual variations in contributions would be from a basic state-wide rate as at present. No industry rates would be established. The basic point in this plan is that the test of employment experience should be a comparison with the average experience of the industry.

A somewhat similar plan was recently suggested.[48] This plan contemplates the determination of a normal rate of unemployment for each industry by averaging the annual rate of separations over a period of ten years or more. The same tax rate would be imposed for the normal rate of all industries but the rates for individual employers would increase when the rate of separations ran above normal for the industry and would decrease when it went below the industry average. This plan is based on the assumption that each industry should be held responsible only for such unemployment as is greater than it has encountered in the past. A serious weakness in this plan is that annual separations constitute a very poor test of the volume of unemployment or of stability of job opportunities. Moreover, it is doubtful whether the same rate should be assessed against a completely disorganized industry such as construction as for an industry which has taken some steps toward stabilization.

Another possible alternative suggested by the same author is one which compares the individual employer's present record with his own experience over a ten-year period. The rate would be increased as the average increases, adding a new year and dropping the oldest each time. Man hours could be used as a test of employment. A ten-year period would appear

[48] Wilcox, Clair, "Unemployment Compensation Laws, Merit Rating", *American Economic Review*, June 1937.

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to be essential in order to include experiences of good years as well as bad. But how many firms remain in business ten years? Also, the worse record an employer has had in the past the greater would be his chances of receiving rate reductions. This plan would also penalize declining industries.

It may be worth while to experiment with the British experience in "contracting out". But clearly, rather than contract out the stable industries like banking and insurance, those industries which have serious seasonal unemployment problems, susceptible to some improvement, should be removed from the pooled fund and made to bear the full burden of the benefits provided by law. This would be a painful process for the industry concerned but might result in substantial reduction in employment fluctuations.[49] The plan is probably not feasible politically because it would be such a painful process and because of the odium which might be attached to an industry selected for experiment.

Conclusions

The principal theme of this article has been that merit rating is unsound because it is an ineffective technique for the stimulation of unemployment prevention and because, in seeking this objective, it endangers the solvency of the pooled fund plan. One might conclude that these criticisms apply equally well to the employer reserve plan since the merit rating technique is borrowed from the reserve plan. But this is not the case. In the reserve plan, there is no pooled fund to endanger; consequently the financial test of merit does not produce harmful results. Moreover, the reserve plan is based on the fundamental premise of individual employer responsibility for unemployment while the pooled fund appears to assume community responsibility. If the merit rating technique is ineffective, it is partly because it is a technique based on the individual employer principle applied to a scheme based on a different principle. While it is true that even in connection with the individual reserve plan a better technique might be

[49] Something of this sort was recently suggested by George E. Bigge in *Social Science Analyst*, January 1937.

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developed for testing merit, the plan is less defective if one accepts the basic premises of the scheme.

The Wisconsin employer reserve plan is a product of the nineteen-twenties with their promise of a stabilized capitalism.[50] The overwhelming choice of the states for the pooled fund plan is a result of the depression of the thirties. Our choice between the two must depend, in the last analysis, upon expectations regarding the course of economic activity during the decade ahead. If it is felt that we have sufficient knowledge and controls necessary to avoid another disastrous depression, it may be worth while to direct our compensation systems to reduce seasonal fluctuations in employment and the instability caused by indifferent or unintelligent management. If that is to be the objective, the employer reserve plan might be the reasonable approach. Though there is no point in building up excessive reserves for employers whose funds are intact, a better device than the financial status of each account might be developed as a basis for determining rate reductions.

If there is substantial ground for fearing a continuance of the present downward trend of economic activity, perhaps the wisest course is to make the fullest possible preparations for sustaining the purchasing power of our industrial population. The primary consideration should then be the solvency of the pooled fund. Any efforts to use the compensation system to promote the stabilization of employment should not be permitted to work at cross purposes to the main objective. It is our conclusion that the automatic merit rating plans incorporated in many of our compensation laws are largely ineffective for the prevention of unemployment and seriously hinder the building up of adequate reserves to meet the hazards of the next depression.

[50] It is of interest to note that the original Wisconsin plan, developed by Professor J. R. Commons and incorporated in the Huber Bill of 1921, provided that unless given special exemption every employer had to insure his liabilities in a mutual company under state control and that industry classification was to be established with industry rates. In other words, the plan was more similar to the pooled fund plan and to the plan suggested above from the workmen's compensation experience than it was to the present Wisconsin employer reserve plan. For a more detailed description of the Huber Bill, see Ewing, J. B., *Job Insurance* (Norman, Okla., 1933).

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Without correcting the basic inconsistency of merit rating with a pooled fund, certain minor improvements can be made to reduce the effects on reserves. These would include provision for minimum contributions from all employers, provision for upward adjustment of contributions to compensate for rate reductions, and a provision making rate reductions inoperative when the total payments out of the fund exceed total income for the previous year.

Any effective plan for preventing unemployment through unemployment compensation must take into account the hazards of different employments and must test each employer in relation to the average hazards of his industry. A sound plan would also provide a closer correlation between rate variations and control of the volume of unemployment. If a plan of merit rating which meets these tests of effectiveness does not appear to be feasible, it would seem that the time is not ripe to adopt any merit rating plan. The pressure for rate reductions should not be permitted to force our American compensation system into an unsound line of development. Perhaps the best immediate plan is to provide for a study of the subject as nine states are now doing.

If the states are to be permitted to grant variations in contribution rates, it would seem that there should be greater federal control than at present. If it was necessary for the federal government to act in this field in order to do away with the fear of interstate competition, it would seem to be a correlative duty to prevent the development of wide tax variation between states in the program it sponsors. While experimentation may be highly desirable, central control is essential if the experiments are to be of value.

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THE FINANCIAL RELATIONS OF CHURCH AND STATE IN GERMANY, 1919-1937

WHEN the National Socialists came to power in Germany on January 30, 1933, they began the process of liquidating all opposition. Rival political parties, labor unions, professional associations, athletic clubs and other groups were either abolished or brought under rigid control. The federalism of the Weimar Constitution was replaced by a highly centralized form of government under which the German states (*Länder*) became mere agencies of the Reich. Municipalities were subjected to a uniform rule. The Socialist, the Communist, the Liberal, the pacifist and the Jew were imprisoned, exiled or silenced. As the Four-Year-Plan unfolds, the economic life of the country is more and more minutely regulated. The process of regimentation in every walk of life is now almost complete.

What is the position of the churches in such a totalitarian state? For five years, the German church conflict has raged, now openly, now behind the scenes. It has been a struggle both within the Catholic and Evangelical churches, and between these churches and the state. The outcome of this new *Kulturkampf* is not yet certain but the main political and theological issues are now clear. However, the financial aspects of the subject, especially the church taxes and the governmental subsidies to the churches, have thus far not been adequately treated. Hence the purpose of this article is to discuss the financial relations of church and state, both in National Socialist Germany and in the preceding democratic era, since the two are closely connected.

Although the Weimar Constitution of 1919 proclaimed the principle, "There is no state church", this provision was not intended to secure a separation of church and state such as is known in the United States. As contrasted with the pre-war

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situation, there was a general loosening of the ties between altar and throne, a change well symbolized by the fact that the former ruling princes were no longer *summi episcopi* in their respective states. But in spite of these modifications, substantial connections between the *Länder* and the publicly recognized churches were retained.

Before 1919, German churches were divided into two main groups. The first group comprised the comparatively unimportant "free" churches such as the Old Lutherans, Mennonites, and other small denominations. In so far as these were incorporated, they were incorporated under the civil law; the state granted them no taxing powers and exercised no special supervision over them. The "free" churches, therefore, may be dismissed from further consideration.

In the second group were found the churches which were recognized by the state as corporations of the public law. They enjoyed special privileges and in return the state supervised their organization, personnel, property and finances. The status of these publicly recognized religious bodies varied from state to state; and even within the same state, there might be differences. Thus, in certain parts of Prussia, the Jewish synagogue parishes were public law corporations but their position was inferior to that of the Prussian Evangelical *Landeskirchen,* the "state" churches, with the king as the head thereof. Prior to 1919, state recognition was chiefly confined to the Evangelical (both Lutheran and Reformed or Calvinist) and Roman Catholic faiths.

The concept of religious public law corporation was perpetuated by the Weimar Constitution. In the fifth paragraph of Article 137 is the following stipulation:

> Existing religious societies remain, to the same extent as heretofore, corporations of the public law. The same rights shall be accorded to other religious societies if by their constitution and the number of their members they offer a guarantee of permanence.

This article preserved the *status quo* but added the requirement that each state must treat alike such religions as it pub-

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licly recognized.[1] The wording of the Constitution itself and the debates in the constitutional convention give no precise meaning to the term, "religious corporation of the public law." Such definition rests with the individual states, but it must at least include the power to levy church taxes (Art. 137, par. 6). The public law status may be granted either to a single parish (*Kirchengemeinde*) or to the larger ecclesiastical units. In Prussia, for instance, the Evangelical Church of the Old Prussian Union (comprising the provinces constituting the territory of Prussia in 1817), its provincial and county divisions, and constituent parishes are all public law corporations.

During the Weimar period, the number of publicly recognized religious associations was increased from time to time.[2] There have also been confirmations and additions under National Socialist rule. The Concordat of 1933, concluded between the Reich and the Vatican, specifically guaranteed the public law status of the Catholic dioceses and parishes.[3] The *Deutsche Evangelische Kirche,* created in 1933 as the national Evangelical organization of the whole Reich and intended to unify the twenty-eight existing *Landeskirchen,* was declared to be a public law corporation.[4] In 1936, after the formation of the United German Methodist Church, public law status was conferred upon that body.[5] However, the efforts of the German Faith Movement (*Deutsche Glaubensbewegung*) and other neo-pagan groups to acquire a similar standing as public

[1] "Ethical culture" societies may also be recognized as public law corporations (Art. 137, par. 7). However, public recognition does not involve equal subsidies from the state. On public law religious corporations, see G. J. Ebers, *Staat und Kirche im neuen Deutschland* (Munich, 1930), pp. 179-209.

[2] F. Giese, "Staat und Kirche im neuen Deutschland", *Jahrbuch des öffentlichen Rechts,* vol. 20 (1932), pp. 116-167, especially pp. 139-140.

[3] Concordat, Art. 13 (*Reichsgesetzblatt* [hereafter cited as *RGBl.*], II, p. 679).

[4] *Gesetz über die Verfassung der Deutschen Evangelischen Kirche,* July 14, 1933 (*RGBl.,* I, p. 471). In this article, the term *Deutsche Evangelische Kirche* is used to refer to the national organization or *Reichskirche.* The public Evangelical churches of the various states are cited as *Landeskirchen.*

[5] *Junge Kirche,* vol. 4 (1936), p. 351.

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religious societies have thus far been unsuccessful. It is still true that the greater part of the German people have a nominal official membership in the publicly recognized Christian churches. According to the census of 1933, approximately 62 per cent of the inhabitants are "Evangelical" (i. e., belong to the United, Lutheran or Reformed *Landeskirchen*) while 33 per cent are Roman Catholic.[6]

The public law religious corporations are usually granted a direct state subsidy. From the time of the Protestant Reformation and the confiscation of ecclesiastical properties by the lay princes, the Evangelical *Landeskirchen* have received financial help from the states. The same has been true of the Catholic Church, especially after the secularization of its properties authorized in 1803 as a part of the Napoleonic readjustments. Thus, in the course of time, these churches came to receive public financial aid for pastors' salaries and pensions, general administrative expenses, support of church educational institutions, and other purposes.

The continuance of public subsidies to the churches was definitely guaranteed by the Weimar Constitution (Arts. 138, 173). These articles were the subject of considerable controversy in the democratic era; under National Socialism, the subsidies are also arousing bitter dispute. According to the Constitution,

> State contributions to religious societies authorized by law, agreement, or special legal title, will be commuted by state legislation. The general principles of such legislation will be defined by the Reich. . . . Until the adoption of a Reich law under Art. 138, the existing state contributions to the religious societies, whether authorized by law, agreement, or special legal title, will be continued.[7]

Although no Reich legislation has yet been adopted, these provisions were intended to prevent the states, by unilateral action, from abolishing or reducing the church subsidies in so far as these rested upon "law, agreement, or special legal

[6] *Statistisches Jahrbuch für das Deutsche Reich*, vol. 55 (1936), p. 14.

[7] Art. 138, par. 1; Art. 173.

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title." But post-war conditions, especially after the inflation which culminated in 1923, were very different from those before 1914. It is not surprising that litigation over the subsidies arose [8] and that the subject figured in the various concordats and agreements negotiated during the decade 1923-1933.[9] One of the most famous cases involved the state of Saxony and the Saxon Evangelical Lutheran *Landeskirche,* and concerned the revaluation of the subsidies. In 1927, the *Staatsgerichtshof* of the Reich held that Saxony was obligated to make an appropriate revaluation of its former contributions, taking account of the currency conditions existing after the inflation and of the present needs of both church and state.[10]

Through this and other judicial interpretations, clarification was achieved. In a case in 1929, a parish demanded from the civil municipality the cost of repairing the parsonage, basing its claim on an agreement of 1824. The *Reichsgericht* ruled that Article 138, par. 1 and Article 173 applied only to the relations between church and state, not to those between church and municipality. However, since the agreement of 1824 involved property rights, it was guaranteed by Article 138, par. 2, which reads: "The property of religious societies and unions and other rights to their cultural, educational, and charitable institutions, foundations, and other possessions are guaranteed." [11] Another decision held that the constitutional

[8] As in Anhalt, Brunswick, Hesse, Lippe, Mecklenburg-Strelitz and Saxony. See Giese, *loc. cit.*, pp. 117 *et seq.*

[9] Anhalt, Baden, Bavaria, Brunswick, Hesse, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Schaumburg-Lippe, Thuringia and Prussia negotiated agreements with the Evangelical *Landeskirchen.* Concordats or agreements with the Catholic Church were concluded by Anhalt, Baden, Bavaria and Prussia. The Reich Concordat of 1933 (Art. 18) confirmed the legal rights of the Catholic Church to subsidies. See Joseph Wenner, *Reichskonkordat und Länderkonkordate* (Paderborn, 1934), pp. 10-11.

[10] *Entscheidungen des Reichsgerichts in Zivilsachen,* vol. 118, supplement, pp. 1-22.

[11] *Ibid.,* vol. 125, pp. 186-191. The legal and financial relations of the civil municipality and the publicly recognized churches located within it are numerous and complex but lack of space prevents discussion of them. See Meyer-Lülmann, "Rechtsbeziehungen zwischen politischen Gemeinden und Kirchengemeinden", *Der Gemeindetag,* vol. 30 (1936), pp. 126-29.

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guarantees covered not only the subsidies but also the exemption of church real estate from state taxes.[12] In still another case, the court stated that, in the absence of Reich legislation, the amount of the subsidy could be settled by mutual agreement between the particular state and church concerned.[13] On the other hand, there was no constitutional bar which prevented a state from increasing its grants as Prussia (and other *Länder*) did. Prussia thereby aimed to bring pastors' salaries more nearly in line with the salary schedules of state officials; in fact, after the inflation, Prussia annually contributed a large part of the pastors' salaries. It is these "voluntary" grants that have been the particular object of National Socialist attack. But before discussing that topic some statistics concerning the subsidies should be noted.

The following table shows for various years the total amounts contributed by all grades of government to the churches.[14]

Year	*In marks*
1913–14	79,700,000
1925–26	148,000,000
1928–29	163,800,000
1930–31	162,000,000
1931–32	135,300,000
1932–33	115,500,000
1933–34	113,600,000
1934–35	112,800,000

[12] *Entscheidungen*, vol. 111, p. 138. German churches and their institutions have long enjoyed wide exemption privileges from national, state and local taxes. The Nazis have thus far made no important changes in these tax exemptions but there is a tendency to be more strict in granting such privileges than under the Weimar régime.

[13] *Entscheidungen*, vol. 113, p. 350.

[14] Fritz Terhalle, *Leitfaden der deutschen Finanzpolitik* (Munich, 1936), p. 32; *Statistisches Jahrbuch für das Deutsche Reich*, vols. 55, 56 (1934, 1935), *passim*. The sums named do not include the revenues received from church taxes nor the estimated value of the tax exemptions enjoyed by the churches. The amounts for 1933-34 and 1934-35 are the totals of state and local expenditure; no figures for the Reich are available. The most recent estimate of the subsidies is from 95,000,000 marks to 105,000,000 marks. *N. Y. Times*, Jan, 9, 1938.

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Of the sum given in 1932-33, the Reich paid 1,000,000 marks; the municipalities, 7,700,000 marks; and the balance came from the seventeen states. The states have furnished the bulk of the public financial support for the churches. For example, in 1928-29, the state of Bavaria paid 30,864,000 marks to the Catholic and Evangelical churches; in the same year, Prussia paid 71,600,000 marks.[15] As the above table indicates, the depression brought drastic reductions in these governmental subsidies. Prussia spent 53,131,000 marks in 1932-33 and 52,699,000 marks in 1933-34; the total Bavarian subsidy in 1933-34 was 26,062,000 marks.[16]

Although the National Socialists claim to have brought back German prosperity, they have not seen fit to restore the church grants to the pre-depression levels. On the contrary, since 1934, they have decreed still further "economies"; and such subsidies as they have voted have not infrequently been withheld as a means of overcoming ecclesiastical opposition. Where reductions have been made, they have usually been in the so-called "voluntary" grants rather than those which are "mandatory" because resting upon "law, agreement, or special legal title." Baden in 1935 abolished all voluntary subsidies for pastors' salaries;[17] Bavaria took similar action in 1936. Bavaria's mandatory grants exceed six million marks per year and are still being paid in full, but the voluntary grants are being reduced by more than five million marks in the period 1936-39. The money saved is to be used "to build schools."[18] Reductions have also been reported in Württemberg, Saxony and Prussia, the Prussian budget appropriation for 1937-38 being 5,419,000 marks less than the sum expended in 1933-34.[19]

[15] Ebers, *op. cit.*, p. 243, n. 1. The Prussian sum includes contributions to the Old Catholic Church and to the Jewish parishes.

[16] *Statistisches Jahrbuch*, vols. 54, 55, *passim*.

[17] *Junge Kirche*, vol. 3 (1935), p. 375. It is only fair to add that a Baden law of 1930 provided for the gradual reduction of the voluntary subsidies and their eventual abolition in 1935.

[18] Bavaria, *Gesetz über die Senkung der Staatsleistungen für kirchliche Zwecke*, June 15, 1936 (*Gesetzblatt* [*GVB.*], p. 103); London *Times*, June 29, 1937.

[19] *Junge Kirche*, vol. 3 (1935), pp. 86, 527; vol. 4 (1936), pp. 992-3;

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There is no doubt that the rulers of the Third Reich are using financial coercion against the churches.

Just as the Weimar Constitution continued state subsidies to the churches, so also it retained the principle of church taxes. Article 137, par. 6, reads: "Religious associations which are public law corporations are entitled to levy taxes on the basis of the civil tax lists according to the provisions of the laws of the respective states." Church taxes were introduced in Germany in the first half of the nineteenth century. Because of the secularization of church property after 1803, the abolition of tithes, and other changes, ecclesiastical revenues were adversely affected. Accordingly, church taxes were authorized in so far as the income from church property, fees, gifts and subsidies was not sufficient. Lippe (1827) was the first state to provide by law for church taxes and the practice gradually spread to other states.[20] At the outset, the civil municipality levied the taxes for the church,[21] but later the taxes were levied by the church parishes, although collected by the civil taxing authorities. The fiscal importance of church taxes is seen by the fact that they yielded 92,927,000 marks in 1913. This sum represents the total amount levied by the publicly recognized Evangelical, Catholic and Jewish churches of Germany.[22] No figures are available for the post-war years, but for 1927 it is estimated that the church taxes amounted to 240,000,000 marks. The estimated present yield is 200,000,000 marks.[23]

The Weimar period brought far-reaching changes in the German tax structure, the Reich taking over from the states various important sources of revenue, especially the income

Prussia, *Gesetz über die Feststellung des Haushaltsplans für das Rechnungsjahr 1937* (*Gesetzsammlung* [*GS.*], p. 13).

[20] F. Giese, *Deutsches Kirchensteuerrecht* (Stuttgart, 1910), pp. 16, 21, and *passim*. But municipal tax levies for church building purposes were much older.

[21] This in effect is still the case in small Prussian parishes which levy no church taxes but which receive current support from the civil municipality.

[22] Walther Lotz, *Finanzwissenschaft* (Tübingen, 1917), pp. 504-5.

[23] Walther Herrmann, "Die Finanzwirtschaft der deutschen Kirchen", *Finanzarchiv*, new series, vol. 3 (1935), pp. 436-460, especially p. 456. *N. Y. Times*, Jan. 9, 1938.

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tax. A system of national finance offices, organized upon a state and local basis, was established to administer all taxes levied in whole or in part for the use of the Reich.[24] By the Finance Equalization Law, public religious corporations were authorized to levy percentage additions or surcharges on the national taxes which had replaced the state and local taxes.[25] The Reich Tax Ordinance of 1919 empowered the Reich minister of finance, upon request of a state government, to turn over to the national finance offices the collection of church taxes.[26] In consequence, church taxes are now largely collected through the national finance offices but collection through the local civil authority still prevails in many communities.[27] The fee which is charged for the collection service is usually 3, 4, or 5 per cent, which does not seem excessive in view of the work involved. On the other hand, it must not be overlooked that the church authorities give a large measure of coöperation and assistance to the civil collecting agencies. In various cities, a church tax section of the national finance office has been created, the personnel of which is supplied and paid by the church but which is deputized to act under the general supervision of the finance office.[28]

On the whole, national constitutional or statutory provisions relating to church taxation are comparatively few; the details are governed by state law. This is true both of the Weimar Reich and of the National Socialist Reich.[29] The following discussion will be confined chiefly to Prussia with some reference to the other *Länder*.[30] In Prussia, the taxing unit is the

[24] *Reichsabgabenordnung* of 1919 as amended in 1931 (*RGBl.*, I, 1931, p. 161).

[25] *Finanzausgleichsgesetz*, Art. 20, par. 1 (*RGBl.*, I, 1926, p. 203). This law was first passed in 1920 as the *Landessteuergesetz*.

[25] *Reichsabgabenordnung, lex cit.*, Art. 18.

[27] The church affiliation of each taxpayer is always indicated in the tax records.

[28] W. Koch, K. Grünbaum and G. Banasch, *Die Kirchensteuer in Preussen* (Berlin, 1933), pp. 26-7.

[29] On the church tax legislation of the Weimar period, see F. Giese in the *Jahrbuch des öffentlichen Rechts*, vol. 13 (1925), pp. 273-86; and vol. 20 (1932), pp. 152-165.

[30] See Koch, Grünbaum and Banasch, *op. cit.*

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local parish. No church tax is levied on a state-wide basis.[81] Each Prussian parish must set aside at least a specified minimum percentage of the church tax revenue to be applied to the salary of its pastor or pastors. The balance is divided; a part is appropriated for parish expenses; while a considerable portion must ordinarily be turned over to the higher church authorities, who use it not only for their own expenses but also as a central fund for equalizing pastors' salaries locally.

Church taxes may be levied in so far as other sources of revenue prove inadequate; they constitute an adjustable factor in the budget. The tax rates are determined annually by the local parish governing bodies and are subject to the approval of the higher church authorities and of the state. There is great variation of rates from place to place.[82] Since the parish boundaries do not necessarily coincide with those of the civil municipality, there may also be wide divergences in the rates levied within a given community. This occurs not only where the parishes are of different denominations but even where they are of the same denomination. Thus in Magdeburg, in 1926, the church surcharges on the national income tax varied from 2 per cent to 15 per cent.[83] Such inequalities have often been obviated by the union of all the Catholic or Evangelical parishes of a locality into a single *Gesamtgemeinde* for the purpose of levying uniform church taxes.[84]

As in the pre-war system, the church tax is generally a percentage surcharge on a national, state or local tax. For example, an individual paying a national income tax of one hundred marks per year might be called upon to pay 10 per cent of one hundred marks or ten marks as a church tax. In Prussia, the principal taxes used for church surcharges are the national income tax (the most important base), the national property tax, the state real estate tax, and the state business

[81] About half the states have both state-wide and local church taxes.

[82] C. Cramer, "Kirchensteuer und Kirchensteuerstatistik", *Allgemeines statistisches Archiv*, vol. 24 (1934), pp. 429-434.

[83] W. Herrmann, *loc. cit.*, p. 444.

[84] *Statistisches Jahrbuch deutscher Städte*, vol. 23 (1928), p. 670.

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tax.[35] Parishes wishing to levy church taxes must use the national income tax as a basis, either separately or in combination with other taxes.

Though the scheme of church taxation is elaborate, it nevertheless has loopholes. Wage-earners who are exempt from the national income tax because of low incomes obviously have no base upon which the church tax may be surcharged. Moreover, because of the administrative difficulty and expense involved, small sums due as church taxes are frequently not collected. The consequence is that many households with church affiliations escape taxation. To increase the number of tax-paying church members, Prussia in 1928, following the example of other states, authorized a direct capitation tax known as *Kirchgeld*.[36] This may be a flat per capita tax of three marks per year or it may be graduated up to a maximum of thirty marks per year. *Kirchgeld* may be levied upon all adult church members (with certain exceptions such as the unemployed), or, as in some states, it may be imposed only upon those who pay no other church taxes. Upon request, the national finance offices will collect *Kirchgeld* but only from those persons from whom they already collect church taxes. As for the other members, the parish itself is responsible for collection but it may use the tax machinery of the civil municipality to compel payment.

The publicly recognized churches are usually permitted to tax only their own members.[37] However, there are few exceptions to this rule. In various states (e. g., Baden, Bavaria, Thuringia and Württemberg) certain kinds of church taxes are levied upon corporations. Another type of exception is found in Prussia. By the Prussian church tax ordinances enacted before 1905 and still in force in many smaller communities,

[35] The state real estate and business taxes have been superseded by uniform national legislation (*Gewerbesteuergesetz* and *Grundsteuergesetz* of Dec. 1, 1936, *RGBl.*, I, pp. 979, 986). These taxes are no longer levied by the states but only by the municipalities within the limits laid down by the Reich.

[36] Koch, "Die Neuordnung des Kirchensteuerrechts in Preussen", *Deutsches Steuerblatt*, vol. 12 (1929), pp. 389-96, 493-500.

[37] Pastors and church officials are subject to church taxes; persons in the military service are not.

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real estate in general is taxable *in rem* for church purposes. In these circumstances, a Catholic landowner may be forced to pay an Evangelical church tax and vice versa.[38] Notwithstanding these exceptions, the general principle limits taxation to church members. An individual may escape church taxation only by withdrawing from the church—a formal procedure definitely prescribed by the statutes of the states.[39] The laws also provide for cases where husband and wife are of different faiths and for other contingencies.

The impact of National Socialism has thus far produced relatively few fundamental changes in church taxation. Taxes are still being levied by the public law churches (even by Jewish synagogues!), but the government is insisting upon lower church tax rates. A Prussian decree of March 8, 1935 provided that the church tax rates for 1935 should be at least 20 per cent lower than in 1934.[40] The Bavarian church tax laws of 1934 and 1935 [41] prescribe the exact rate which must be imposed for each kind of church tax. For many Bavarian parishes, the new rates are lower than those which the parish previously levied.

There have been proposals for church tax legislation in Prussia but thus far no law has been passed.[42] However, the church tax decree of 1935 for the Saar Territory has several interesting features.[43] A uniform church surcharge on the national income tax is provided. For 1937-38, the rate has been fixed at 12 per cent for the Evangelical parishes and 13 per cent for the Catholic parishes.[44] If this rate does not pro-

[38] *Entscheidungen des Reichsgerichts in Zivilsachen*, vol. 142 (1934), pp. 279-80; vol. 150 (1936), pp. 205-6.

[39] See Gotthold, "Das Recht des Kirchenaustritts", *Reichsverwaltungsblatt*, vol. 56 (1935), pp. 630-34.

[40] *Evangelium im Dritten Reich*, vol. 4 (1935), p. 142. Exceptions might be made with the permission of the state officials charged with the approval of church tax levies.

[41] See *infra*. Württemberg also reduced church taxes. *Stuttgarter Neues Tagblatt*, Nov. 11, 1935.

[42] *Junge Kirche*, vol. 4 (1936), pp. 571-2; vol. 5 (1937), p. 326.

[43] *Kirchensteuerverordnung für das Saarland* (*RGBl.*, I, p. 1527).

[44] Decree of May 22, 1937 (*RGBl.*, I, p. 620).

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duce enough money to enable a parish to balance its budget, the parish may then levy surcharges on the national property tax, the real estate tax and the business tax; it may also collect *Kirchgeld.* Another important change introduced in the Saar deals with the method of collecting the church surcharge on the national income tax. To understand this, some comment on the national income tax itself is necessary.

When the national income tax is levied upon wages or salaries, it is called the *Lohnsteuer* (wage tax) and is collected at the source. Four fifths of those subject to national income taxation in Germany pay in this way. The employer deducts the national income tax from the salaries or wages of his employees, according to the entries on tax cards which the latter must file with him. The tax cards are prepared in the first instance under the supervision of the local tax authorities.[45] The *Lohnsteuer* form of the national income tax is comparatively simple to administer. The national finance offices do not need to send out individual tax notices, since the employers deduct the tax in monthly or fortnightly installments and turn over the proceeds to the national finance offices.

But when the church tax is surcharged on the *Lohnsteuer,* a notice is mailed to the individual employee and the church tax is collected from him directly, not through his employer. This is because the church surcharges on the *Lohnsteuer* vary greatly from parish to parish; and the employees in any given undertaking may come from many parishes. Under these circumstances, to require the employers to deduct the church tax from the wages of their workmen would cause much expense and inconvenience. Hence in Prussia, and in most of the other states, the national finance offices collect the church surcharges on the *Lohnsteuer* directly. This means sending out thousands of individual notices to persons, the great majority of whom are in the lower income groups. The amount of the church tax is usually small, the cost of collection is high, and contested assessments and non-payments are frequent. All this is avoided under the Saar law where the uniform church tax based on the *Lohnsteuer* is deducted and paid over by the em-

[45] Terhalle, *op. cit.*, pp. 110-112.

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ployers in the same way and at the same time as the *Lohnsteuer* itself. The Bavarian church tax laws of 1934-35 contain a similar provision.

The Bavarian legislation just cited deserves separate mention because of its drastic character.[46] It introduces an absolutely uniform system of church taxation throughout the state. All local surcharge taxes are abolished; state-wide taxes with fixed rates are provided for the publicly recognized churches. The church surcharge on the national income tax is set at 8 per cent; the surcharges on the other taxes are 10 per cent.[47] When these taxes are paid by corporations, the church surcharge is 3 per cent of each tax paid.[48] The taxes are still collected by governmental agencies as before, but these are now required to turn over the proceeds to the central authorities of the churches instead of to the local parishes. The central authorities then distribute the funds among the parishes and the law expressly stipulates that no parish may complain about the share allotted to it. The Bavarian plan has the advantage of being easy to administer. On the other hand, it destroys the financial autonomy of the parish. At a time when the churches are torn by internal and external dissension, it places a powerful weapon in the hands of the central ecclesiastical authorities, who in turn are brought more firmly under the control of the state.

From church subsidies and taxes, it is pertinent to turn to a more detailed examination of the financial aspects of the present *Kulturkampf*. Although the National Socialist party program (Art. 24) asserts its support of "positive Christianity", and although Hitler has more than once declared that the rights of the churches would not be infringed, actually Catholicism and Protestantism have both been subjected to heavy attack. This attack has had less effect upon the finances

[46] Bavaria, *Gesetz über die Kirchensteuer*, May 20, 1935 (*GVB.*, p. 429); *Bekanntmachung* for the same (*ibid.*, p. 436). The provisional law of March 27, 1934 was superseded by the definitive law of 1935.

[47] In case of unavoidable need, the state ministers of finance and education are empowered to raise the uniform rates for a limited period of time.

[48] The proceeds of church taxes on corporations are distributed among the publicly recognized churches in proportion to their respective memberships.

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of the Catholic Church than upon those of the Evangelical *Landeskirchen.* German Catholicism has maintained intact its own hierarchical organization; it has insisted upon the provisions of the Concordat of 1933, which guarantee its properties, the continuance of state subsidies, and the right to levy church taxes. To be sure, the Catholic Church has suffered losses. Its properties were seriously affected by the heavy fines levied on monastic orders in 1935 for violations of the foreign exchange regulations;[49] the subsidies, in so far as they were of a voluntary character, have been reduced or eliminated; and the compulsory lowering of church tax rates has likewise had adverse consequences. More recently (1937), the government has asked both the Catholic and Protestant churches to allocate church lands for settlement purposes, with the threat that, if the allocation is not made voluntarily, expropriation will follow.[50] Furthermore, the educational and other provisions have undoubtedly been violated by the National Socialist régime, but neither the German government nor the Vatican has yet reached the point of denouncing the Concordat. Nevertheless, in spite of all these things, the financial relations of the state and the Catholic Church are thus far substantially unchanged.

Far different is the situation in the Evangelical churches. The liberal Weimar Republic, which exercised its supervision over the public religious corporations in a very perfunctory manner, has been replaced by the totalitarian Reich, which brooks no opposition in the name of religion. The temper of the new rulers was shown by the appointment of state commissioners in a number of the Evangelical *Landeskirchen* during the spring and early summer of 1933. These were soon recalled, largely because of President Hindenburg's per-

[49] Kuczynski estimates that, after the establishment of the Dawes Plan, the German churches and their organizations borrowed over $15,000,000 abroad, chiefly in the United States and Holland. Robert R. Kuczynski, *American Loans to Germany* (New York, 1927), p. 34. These were mostly Catholic loans and, in considerable part, were secured from foreign Catholic orders. The attempt of German Catholic organizations to repay these loans resulted in the foreign exchange "smuggling" trials.

[50] *Reichsarbeitsblatt,* new series, vol. 17 (1937), pt. I, pp. 41-2.

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sonal intervention.[51] However, the great question of the formation of a united *Deutsche Evangelische Kirche* still remained. Most Protestants favored such a union. But what kind of union should be created? Who should control it—the traditional Evangelical leaders or the "German Christians" (*Deutsche Christen*), who wished to adapt the church organization and doctrines to the principles of National Socialism? A constitution for the *Deutsche Evangelische Kirche* was drafted by church representatives in 1933 and was promptly ratified by the Reich. In the church elections held under the new constitution on July 23, the German Christians, with the support of Hitler and the government, scored an overwhelming victory. On September 27, the new national synod met and elected Ludwig Müller as Reich Bishop. Müller attempted to give reality to the *Deutsche Evangelische Kirche* by arbitrary measures "coördinating" the *Landeskirchen.* These acts not only produced schism in the ranks of his German Christian followers but also led (1934) to the creation of a powerful rival organization of orthodox churchmen. This was the "Confessional Synod of the German Evangelical Church", headed by Koch, Niemöller and others. The Confessional leaders did not, at that time, wish to form a separate church; they merely claimed to be the true church and, as such, entitled to receive the state subsidies and to levy church taxes. The financial aspects of the resulting conflict were very involved. Müller, who had likewise been elected bishop of the Evangelical Church of the Old Prussian Union, suspended and retired pastors and church officials, and withheld the subsidy for pastors' salaries from opposition parishes. On the other hand, the Confessional parishes refused to pay over the required part of their church taxes for the support of the higher church authorities controlled by Bishop Müller.[52] This eventually bankrupted the Müller administration; and, after the unsuccessful attempt of Müller's agent, Dr. Jäger, to seize control

[51] *Jahrbuch des öffentlichen Rechts*, vol. 22 (1935), pp. 228-9, 235, 245, 248.

[52] The *Deutsche Evangelische Kirche* as such has no independent power of taxation. It is financed by assessments levied upon the *Landeskirchen. Verfassung der Deutschen Evangelischen Kirche*, Art. 11, par. 4.

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of the *Landeskirchen* of Bavaria and Württemberg (September-October 1934), Müller's failure was generally admitted.

Although the government professed to be neutral in the struggle which Bishop Müller had precipitated, it was not at all pleased by the turn of events.[53] Dr. Frick, the Reich Minister of the Interior, said that the government was not interested in financing church squabbles, and it was intimated that a bill had been drafted to take from the Evangelical churches their public law status.[54] The Reich Minister of Propaganda, Dr. Goebbels, asserted that "the time may come for the state to declare that the Protestant church should itself finance the twenty-eight *Landeskirchen* if it wishes to maintain them; the state has no money for such purpose."[55] By the spring of 1935, German Protestantism had reached such a deadlock that the government intervened with a series of stringent laws and decrees.

The first piece of legislation was Prussia's finance law, which will be discussed later.[56] This was followed by a Reich statute creating a special court (*Beschlwssstelle*) for deciding disputed questions of law arising out of the Evangelical church struggle.[57] The legality of the steps taken by Bishop Müller's administration had been repeatedly challenged in civil actions brought before the ordinary courts and had resulted in a variety of contradictory decisions. The whole subject was therefore removed from the jurisdiction of the ordinary courts. The new *Beschlussstelle* has exclusive jurisdiction over all cases involving the legality of measures taken since May 1, 1933 in the *Landeskirchen* and in the *Deutsche Evangelische Kirche*. It consists of the Reich Minister for Church Affairs and four

[53] By a decree of Nov. 1934, the Reich Minister of the Interior established a rigid censorship on all news of the church struggle.

[54] *N. Y. Times*, Dec. 8, 1934; Jan. 25, 1935.

[55] *Junge Kirche*, vol. 3 (1935), p. 86.

[56] Prussia, *Gesetz über die Vermögensverwaltung in den evangelischen Landeskirchen*, March 11, 1935 (*GS.*, p. 39). See *infra*.

[57] *Gesetz über das Beschlussverfahren in Rechtsangelegenheiten der Evangelischen Kirche*, June 26, 1935 (*RGBl.*, I, p. 774). See also Schucht's article in the *Reichsverwaltungsblatt*, vol. 56 (1935), pp. 788-792.

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other members appointed by him.[58] The *Beschlussstelle* was at first used as a kind of "pickling committee"; over seventy cases[59] were laid before it but none was decided for almost two years while the Reich Church Committee[60] was trying to pacify the church. However, after the resignation of the Reich Church Committee (February 1937), the *Beschlussstelle* began to function. Its decisions thus far have mostly been unfavorable to the Confessional Synod and its supporters.[61]

Next, a Reich decree (July 16, 1935) created the Reich and Prussian Ministry for Church Affairs,[62] which took over the church supervisory functions formerly exercised by the ministries of the interior and of education, and of which Hans Kerrl was made the head. After the ministry was formed, the *Beschlussstelle* was attached to it. But the most significant power of the ministry is that conferred upon it by a Reich law of September 24, 1935.[63]

This statute, after a rhetorical preamble, reads as follows: "In order to restore ordered conditions in the *Deutsche Evangelische Kirche* and in the Evangelical *Landeskirchen,* the Reich Minister for Church Affairs is empowered to enact decrees with binding legal force." Under this authorization, many decrees have been issued. The earlier decrees[64] created a temporary church government intended to hold office until September 30, 1937. The *Deutsche Evangelische Kirche* was placed under a Reich Church Committee (Dr. Zöllner, chairman), and similar committees were likewise soon appointed in various *Landeskirchen.* These committees were given broad powers in all matters except those relating to church finances and property. Kerrl's appointees were, in the main, church-

[58] Decree of July 27, 1935 (*RGBl.*, I, p. 1060).

[59] *International Conciliation*, No. 324, Nov. 1936, p. 566.

[60] The Reich Church Committee is discussed in the following paragraphs.

[61] *Junge Kirche*, vol. 5 (1937), pp. 513-4, 658, and *passim.*

[62] *RGBl.*, I, p. 1029.

[63] *Gesetz zur Sicherung der Deutschen Evangelischen Kirche, RGBl.*, I, p. 1178.

[64] For the text of these decrees, see Werner Weber (ed.), *Staatskirchenrecht* (Berlin, 1936), pp. 36 *et seq.*; and the *RGBl.*, I, *passim.*

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men of moderate views and for a time they seemed to be successful in their policy of compromise. However, the more extreme leaders both of the German Christians and of the Confessional Synod remained hostile to the new regulations. Furthermore, Kerrl, pressed by the religious radicals within the National Socialist Party, did not give consistent support to the Reich Church Committee, especially in its efforts against the National Church Movement of the German Christians in Thuringia. Consequently, Zöllner and his colleagues resigned on February 13, 1937. Hitler then intervened and ordered church elections to a general synod which would determine the constitution and future status of the church. This step has only aroused fresh disagreement. Will the elections again be "packed" as they were in 1933? Who will be allowed to vote and how will the vote be taken? Will free discussion be permitted? In view of the difficulty of these and similar questions, the government has several times "postponed" the proposed elections.

As has already been pointed out, the Reich Church Committee and the corresponding state and provincial committees had no authority over church property and finance. Such authority was and still is vested in the new "finance departments" (*Finanzabteilungen*). These were first created in the Prussian *Landeskirchen*[65] and subsequently were set up in Brunswick and Saxony; a finance department was also added to the national organization, the *Deutsche Evangelische Kirche*.[66] The finance departments are appointed by the Reich Minister for Church Affairs and are responsible to him. The powers of the finance departments include: adoption and execution of the national, state and provincial church budgets; control of the distribution of state subsidies; determination of the amounts to be paid by the parishes for the support of the higher church authorities; and supervision of church taxation

[65] Prussia, *Gesetz über die Vermögensverwaltung in den evangelischen Landeskirchen, lex cit.;* and the first decree in execution of this law, April 11, 1935 (*GS.*, p. 57).

[66] See the decrees of Oct. 3, 1935 (*RGBl.*, I, p. 1221); Nov. 21, 1935 (*ibid.*, p. 1350); and Feb. 26, 1936 (*ibid.*, p. 129).

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and property administration in the parishes. To carry out these powers, the finance departments are authorized, with the approval of the Reich ministries of finance and church affairs, to issue legally binding orders. Such orders may regulate the salaries of all church officials, which are to be paid only to *regularly appointed* persons. Moreover, no vacant office may be filled without the sanction of the finance department. Finally, if the governing body of a parish fails to act in respect of property or financial matters, the finance department may intervene and render the necessary decision. In other words, the finance department has power to vote the local parish budget and fix the tax rates.

This, however, does not exhaust the authority of the finance departments in the field of taxation. As stated before, church tax levies always require the approval both of the higher church organs and of the state. But in the Müller régime, great confusion and controversy arose as to which were the duly constituted higher authorities of the church whose approval was necessary for the levying of church taxes. Were they the agencies created by Bishop Müller, or were they the rival agencies of the Confessional Synod? In an attempt to remedy this legal uncertainty, the new legislation provides that only the finance departments have the right to approve or disapprove church tax rates.

Many Confessional parishes refused to acknowledge the authority of the state-created finance departments and continued to use their church tax funds for the support of the Confessional Synod. Kerrl thereupon announced (August 22, 1935) that parishes which failed to turn over their required quotas to the finance departments would be deprived of all subsidies, and that pastors and other local church officials involved in such practices would be liable to criminal prosecution.[67] The "rebel" parishes replied by retaining the whole of the church taxes in their own treasuries.[68] Then the secret

[67] *Junge Kirche*, vol. 3 (1935), pp. 870-1.

[68] *N. Y. Times*, Sept. 23, 1935. Several months later, the finance department did appoint a commissioner to compel Niemöller's wealthy Dahlem parish in Berlin to pay the state and provincial quotas. *Junge Kirche*, vol. 4 (Feb. 15, 1936), pp. 185-6.

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police confiscated the funds of the Confessional Synod;[69] and on December 15, 1935, Kerrl issued a decree to "outlaw" the Confessional Church. The decree provided that, in those *Landeskirchen* in which Church committees and finance departments had been appointed, no other groups should attempt to exercise powers of church government such as convening synods, appointing pastors, examining candidates for the ministry, levying church taxes and taking collections. Groups disobeying were subject to dissolution.[70] It seemed as if the decisive battle were at hand. But Kerrl hesitated, preferring to allow the church committees to continue their attempt at pacification. The year 1936 thus passed in comparative quiet.

With the resignation of the Reich Church Committee on February 13, 1937, the conflict broke out anew. Kerrl now found himself confronted not only by the Confessional Synod but also by many moderate leaders like Bishops Marahrens, Wurm and Meiser who believed that the Reich Minister for Church Affairs had sabotaged the scheme of church government and was not to be trusted. Again Kerrl resorted to legislative fiat. A decree of March 20, 1937 set up an interim church government to conduct purely routine business pending the establishment of a new leadership after the church elections. The order, however, took care to state that "the powers of the finance departments remain as before."[71] A second decree empowered the state authorities to execute orders of the finance departments by administrative action.[72] A third decree strengthened the powers of the finance departments themselves.[73] Finance departments are now provided for all the *Landeskirchen* without exception. The members of the finance departments are

[69] The money confiscated had been raised by voluntary offerings and was a "reserve" fund, intended to be used if it became necessary to refuse all state support and create a "free" church. *N. Y. Times*, Dec. 1, 1935.

[70] *Fünfte Verordnung zur Durchführung des Gesetzes zur Sicherung der Deutschen Evangelischen Kirche* (*RGBl.*, I, p. 1370). Kerrl was also reported to be drafting a law for the complete separation of church and state. *N. Y. Times*, Dec. 6, 1935.

[71] *RGBl.*, I, p. 333.

[72] Decree of June 10, 1937, *RGBl.*, I, p. 651.

[73] Decree of June 25, 1937, *RGBl.*, I, p. 697.

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still appointed by and responsible to the Reich Minister for Church Affairs but they no longer need be selected from among the church officials as was originally the case. Moreover, the finance department of the *Deutsche Evangelische Kirche* is given extensive authority over the corresponding departments of the *Landeskirchen*. It may issue orders to the *Landeskirchen* with respect to property administration, may inspect their records, and, through a newly created auditing office, may audit their accounts. It is also stipulated that the finance departments are bound by the orders of the Reich Minister for Church Affairs relating to the utilization of state subsidies and church tax revenues. Thus the machinery of financial centralization is complete.

A new phase of the conflict has to do with voluntary contributions to the churches and to church organizations. Under the Weimar Republic, state approval was usually required for church collections unless such collections were taken in connection with the church services. The same rule was continued by the Reich *Sammlungsgesetz* of November 5, 1934.[74] This law provides that state approval is not required for collections of the publicly recognized churches taken at church services and on the church premises. All other public church collections or appeals for funds are subject to state approval.

The welfare organizations of the churches, such as the *Innere Mission* of the Evangelical Church and the *Caritasverband* of the Catholic Church, were long accustomed to make public appeals for funds. In the Third Reich up to 1937, state approval for such collections was usually given. However, even in 1934, the *Caritasverband* was not allowed to solicit funds in Bavaria. In 1935, permission was given; but in Munich, party fanatics mobbed the collectors and drove them from the streets, the police remaining "neutral".[75] Meanwhile, National Socialism was developing its own rival welfare organizations. The Nazi Winter Relief Fund (*Winterhilfswerk*) soon became the greatest "drive" of the year, raising in cash and in kind between 350,000,000 and 400,000,000

[74] *RGBl.*, I, p. 1086. See Art. 15, par. 4 and also Art. 7.

[75] *N. Y. Times*, May 19, 1935.

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marks annually. The funds thus accumulated were in part spent through church welfare organizations, the Red Cross, etc.[77] Such financial assistance was not an unmixed blessing because the state began to impose conditions on the expenditure of the money (e. g., it was not to be used for "spiritual" purposes). In the spring of 1937, a still more drastic step was taken. Both the *Innere Mission* and the *Caritasverband* were denied permission to make a public appeal for funds.[77] Dr. Goebbels said that, in view of the increasing amounts raised by the Winter Relief Fund and of the lessening number of persons in need, the customary summer collections of welfare organizations would be unnecessary since the Winter Relief Fund had sufficient money. Moreover, in the future, all such financing is to be done through the Winter Relief Fund.[78]

This type of governmental financial pressure is not restricted to agencies like the *Innere Mission* and the *Caritasverband;* it is also applied to the churches themselves. Confessional Synod leaders have increasingly stressed the importance of voluntary giving by church members. Furthermore, in Catholic and Evangelical churches alike, there is a growing recognition of the need for voluntary funds to offset declining tax revenues and diminished state subsidies. But the Reich Minister for Church Affairs is now striking at even this source of support. In an order of June 9, 1937, it was provided that only those *regular* church collections which are authorized by the *regular* church authorities at the *regular* church services are free from state approval. Permission is required for all other collections. Violations will be punished by confiscation of the funds thus raised and by criminal prosecution of the guilty persons.[79] Disobedience to this and other state decrees is responsible for the large number of Protestant pastors arrested in 1937.

[76] *Soziale Praxis*, vol. 46 (1937), pp. 495-498.

[77] *Junge Kirche*, vol. 6 (1937), p. 362; *N. Y. Times*, April 19, 1937.

[78] *Junge Kirche*, vol. 6 (1937), pp. 368-9.

[79] Joint decree of the Reich Minister of the Interior and of the Reich Minister for Church Affairs, *Ministerialblatt des Reichs- und Preussischen Ministeriums des Innern*, vol. 98 (1937), p. 946.

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What are to be the future financial relations of church and state in Germany? One hesitates to predict. The Confessional leaders are convinced that the church must be freed from state support. Moderate Evangelicals have opposed such views until 1937, but now their opinion is inclining in the same direction. The Catholics cling to the guarantees of the Concordat, although Cardinal Faulhaber has said publicly that it may have to be denounced.

In the Reich government and in the National Socialist Party, there is no agreement as to policy. Himmler, the *SS* (*Schutzstaffel*), and the secret police would like to break the ties between church and state. The churches would then sink into insignificance and disappear, leaving the way clear for the new generation with its new religious ideology, the "gospel according to Alfred Rosenberg." But this is distasteful to the German Christians, particularly those of Thuringia where the National Church Movement is strong. They prefer to conquer the existing churches from within and thereby reach the goal of a single national, publicly recognized church which will be neither Catholic nor Protestant, but German and Christian. Finally, there are many influential government officials (some of them in the Reich Cabinet) who believe that the system of public law churches as Germany has known it in the past should be retained, thus rendering "unto Caesar the things which are Caesar's and unto God the things which are God's."

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SOVIET STATE FARMS I

An Experiment in Large-Scale Socialist Farming *

THE Russian agrarian revolution of 1917 resulted in the expropriation of most of the private estates and distribution of the land among the peasants. The system of large-scale agriculture, which accounted for one third of the farm area of European Russia, was brought to an end, and Russia, after the October revolution of 1917, became a country of small-scale peasant cultivators.

This agricultural system could not fit permanently into the Marxian scheme of the Soviet state. The Communists held that the continued existence of small-scale farming was bound to perpetuate individualistic, petty bourgeois proclivities among the peasants. Furthermore, the history of Russian agriculture showed that peasant farming had been technically inferior to that of the large, private estates. The Communists insisted, therefore, that peasant agriculture was not sufficiently productive to insure a progressive development of the country's agricultural economy.

Thus, from the Bolshevik point of view, the agrarian question in Russia was not solved by the expropriation of the landed estates, the distribution of this land among the peasants, and the abolition of the right of private ownership in land. A new problem of reorganizing the existing system of agriculture along socialistic lines was inevitable. The solution, as seen by the Communists, was in collective cultivation on a large scale. One of the forms into which large-scale agriculture evolved is the " Kolkhoz ", the peasant collective farm,[1] and the other is

* The author is deeply indebted to Professor Geroid T. Robinson, in whose Seminar at Columbia University this study originated, for many valuable suggestions and helpful criticism. The author, however, assumes sole responsibility for the analysis and conclusions.

[1] See Ladejinsky, W., " Collectivization of Agriculture in the Soviet Union ", Political Science Quarterly, March and June 1934.

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the "Sovkhoz" or Soviet State Farm. The latter is a large agricultural enterprise worked by hired labor, and owned, financed, organized and managed by the government. The state farms are divided into several kinds, such as grain, livestock, cotton, and a number of other types of lesser importance. Our inquiry is concerned with the state grain farm, for it was this type that was called upon to help solve the critical Russian grain problem, and to "blaze the trail" for large-scale socialist agriculture in the Soviet Union.

The Communists and Large-Scale Farming

As a stanch upholder of the Marxian ideology, Lenin ascribed both to industry and agriculture the same fundamental laws of development. Just as, in the field of industry, small enterprises must give way before the advance of large undertakings, so must small farming be superseded by large agricultural enterprises. Lenin was aware that small-scale farming was not immediately doomed but he held that it could not save itself from ultimate ruin. In Lenin's view, "Small-scale agriculture is based upon all sorts of wasteful practices; waste of labor and energies of the farmer, waste of the strength and quality of the livestock, waste of the productive forces of the land." [2] The results, he held, would be quite different if the land of the small holders were pooled and worked on a large scale, since in this manner "the productivity of labor would be doubled and trebled, and human energy in agriculture . . . would be conserved in the same ratio." [3]

Before the Bolsheviks came into power, Lenin envisaged the necessity of organizing large state farms. In April 1917, he wrote that, "in order to improve the technique of grain raising, to increase production in general, and to develop a socially controlled, rational system of land cultivation on a large scale, we must see to it that every Peasant Committee organizes, out

[2] Lenin, N., *Sobranie Sochinenii* (*Collected Works*) (Moscow, 1929, 3d ed.), vol. IV, p. 238.

[3] Galevius, F. K., *Sovhozy v Sisteme Sotsialisticheskogo Stroitelstva* (*State Farms in the System of Socialist Reconstruction*) (Moscow, 1928), p. 11, quoting Lenin.

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of the various estates confiscated by it, a large model estate controlled by the Soviet of Agricultural Laborers' Deputies." [4] With the triumph of the October revolution, the Communist Party in its program outlined a number of measures for the reorganization of the existing individualistic, small-scale system of agriculture. Chief among these measures was one providing for the establishment of "Soviet farms, i. e., large socialist landed estates." [5]

The basic land decree of February 14, 1919 gave final legal form to the state farms. Their main function in the building up of a "unified agricultural economy", which would replace the "transitory and passing" system of individual farming, was to bring about (a) "the maximum increase of output through greater agricultural productivity and the extension of the sown area; (b) the creation of conditions for a complete transition to a collectivistic system of agriculture; (c) the organization and development of cultural agronomic centers." [6]

The Early Period

The history of the organization of the state farms in the Soviet Union falls into two main phases; the period from 1918 to 1928, when the state farms were relatively small units organized on former estates, and the period beginning in June 1928, when the Soviet government inaugurated a program of creating new huge farms. This article is chiefly concerned with the latter period.

Soon after the October revolution it became evident to the Soviet government that a number of the large estates should not be distributed among the peasants and turned into state farms. This was particularly true of the large sugar-beet plantations, and of those estates the preservation of which was important for the future development of agriculture. But in almost every case the real inheritors of the private estates were

[4] Lenin, *op. cit.*, vol. XX, p. 122.

[5] Article 10 of the Communist Party Program.

[6] "O Sotsialisticheskom Zemleustroistve i o Merakh Perekhoda k Sotsialisticheskomu Zemledeliiu" (Concerning the Socialist Plan of Land Organization and Measures of Shifting toward Socialistic Forms of Land Cultivation), *Sobranie Zakonov* (*Code of Laws*), 1919, No. 4, statute 44, art. 29.

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the peasants and not the state farms. The government had to use the remains of the private estates, because the best land, livestock and agricultural implements were already in the hands of the peasants. Coupled with a lack of good managers and an unstable labor supply, which appeared and disappeared with the change in seasons, this constituted the fundamental weakness in the structure of the state farms, which adversely affected their development in succeeding years.

The actual organization of the state farms had begun in 1918, and by the end of 1921 the total number was estimated at 5,629, with an area of 8,886,000 acres.[7] The farms ranged in size from 250 to 5,000 acres. The total number included farms "attached" or "ascribed" to various industrial undertakings; these increased from 491 in 1918 to 1,995 in 1921.[8] The development of the latter type of state farm was stimulated by the severe food crisis which prevailed in the Soviet Union during the years 1919 and 1920. The agricultural output of such farms was intended for the workers engaged in the particular establishments to which the farms were attached.

Because of the shortage of agricultural implements, and because their available animal draft power was hardly sufficient to meet 30 per cent of their requirements, the state farms cultivated only 25 per cent of their crop land. The remainder was rented out or worked by the peasants on a share-cropping basis. It is to be noted also that they employed and fed twice as many workers per unit of land for a given area as did the private estates before the revolution. In these circumstances, the farms could hardly produce beyond their own needs; during the difficult period of Military Communism (1918-1921), they were almost exclusively a source of food supply for those who worked them, alleviating in this manner certain extreme conditions caused by famine and the civil war.

[7] Stoliarov, I. Ia, "Sovkhozy" (State Farms), published in *Trudy Gosudarstvennogo Nauchno-Issledovatelskogo Instituta Zemleustroistva i Pereseleniia (Annals of the State Scientific Research Institute of Land Organization and Migration)* (Moscow, 1928), vol. V, p. 64.

[8] *Ibid.*, p. 66.

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The New Economic Policy, inaugurated in 1921, weakened the position of the state farms still further. This was due chiefly to the decision of the government no longer to finance the farms from the state budget, but to have them continue their work on a self-sustaining basis. Inaugurated at the time when the state farms were in a very precarious economic situation, the New Policy forced them to make adjustments "either by drastic curtailment of the general scope of their work, through the liquidation of the weak state farms, thereby strengthening the better organized units, or by means of a drastic cut in overhead expenses."[9] It was the first, rather than the second, factor that played an important part in the adjustment of the farms. They decreased in numbers from 5,629 in 1921 to 3,347 in 1926, and in area from 8,886,000 to 5,743,680 acres.[10] This recession, which was accompanied not only by the outright liquidation of a number of state farms, but also by the consolidation of smaller units into larger ones, brought about an increase in average size of the farms, which in 1926 ranged from a minimum of 535 acres to a maximum of 7,000 acres.[11]

All the shortcomings from which the state farms suffered found their concrete expression in the yield per acre which in a sense summarized their work. The available yield data are averages for the Soviet Union as a whole and do not permit a regional study of the productivity of state farms versus peasant farms. They show, however, that, even in regions where the yield per acre on state farms was highest, it was far below that on private estates in the same regions before the revolution, and not large enough to indicate any superiority over the peasant farms. A Soviet writer observed that "their [state farms] yields hardly differ from those of the peasant farms."[12]

[9] Bogdanov, M., "Natsionalizirovannoe Selsko-Khoziaistvennoe Proizvodstvo" (State Agricultural Production), published in *Na Novykh Putiakh; Itogi Novoi Ekonomicheskoi Politiki 1921-1922* (*Along New Paths; Results of the New Economic Policy, 1921-1922*) (Moscow, 1923), p. 586.

[10] Stoliarov, I. Ia., *loc. cit.*, pp. 73, 197.

[11] *Ibid.*, p. 199.

[12] Klimenko, E., "Sovkhozy i Poniatie Urozhainosti" (State Farms and the Problem of Yield), *Sovkhoz* (*State Farm*), No. 9-10, 1928, p. 5.

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At the end of nearly a decade of existence, the state farms cultivated only 3,895,000 acres, or 1.4 per cent of the total crop area; they produced 1.6 per cent of the total grain output and supplied somewhat less than 3 per cent of the grain marketed during the year.[13] In general, it may be stated that by 1927 their place in the agricultural economy of the country was still of little significance. And, what was more important, they did not succeed in proving to the peasants that large-scale agriculture was more productive than individual small-scale agricultural economy. The peasants were in general opposed to the organization of the state farms, for they felt that the land should be distributed among themselves. In most cases, the peasant viewed the state farms "as a piece of . . . land which the Land Department did not give him but which it could not manage itself; as an estate where the former owner's cattle die from mismanagement and lack of food."[14] From the peasants' point of view, the above statement made in 1919 might apply equally well to 1927.

The State Farms and the Grain Problem

Notwithstanding the adverse attitude of the peasants toward the state farms and the failure of the latter to develop into profitable state-owned agricultural enterprises, early in 1928 the Soviet government decided to strengthen the old ones and to organize a number of new large farms. This turning point in their development was dictated by the difficulties which the government experienced in procuring grain for the cities and industrial centers, as well as by the slow progress of the country's agricultural economy.

The grain output in 1927 was almost as large as that in 1913, yet the amount of commercial grain was only half, and the volume of grain exports only one twentieth, of the corres-

[13] *Sdvigi v Selskom Khoziaistve S.S.S.R. Mezhdu XV i XVI Partiinymi S'ezdami* (*Changes in the Soviet Agricultural Economy between the XV and XVI Communist Party Congresses*) (Moscow-Leningrad, 1931), pp. 13, 139.

[14] Bogdanov, M., "Delezh Nasledstva—k Voprosu ob Organizatsii Sovetskikh Khoziaistv" (Distribution of the Inheritance—Concerning the Problem of State Farm Organization), *Ekonomicheskaia Zhizn* (*Economic Life*), April 27, 1919.

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ponding figures for the pre-war years.[15] This trend may be attributed to an increase in population and, to a considerable extent, to the refusal of the peasants to sell their grain at the very low prices fixed by the government. In Stalin's opinion, however, small peasant farming, typical of Soviet agriculture after 1917, was at the root of all the difficulties. The low yields, resulting from production carried on chiefly for the peasants' own needs, were responsible for the shortage of commercial grain.

From the Communist point of view the existing situation was fraught with grave dangers, which could be averted only through a system of large-scale mechanized agriculture. But this was to be realized of course not through the introduction into the village of capitalistic large-scale enterprise, but, on the contrary, by the eradication of all its vestiges. One way of achieving this aim was through the consolidation of small peasant farms into large collective farms; the other way out was "in the expansion and strengthening of the old state farms and in the organization and development of new large state farms."[16] According to Stalin, the old and the new state farms were together to produce from 1,440,000 to 1,800,000 short tons of commercial grain per year within the next three or four years.[17] Aside from the fact that this quantity of grain would lessen the country's dependence upon the peasant supplies, Stalin saw also in the organization of the new state farms the lever which could be used to shift peasant agriculture to a new base:

> In the van will go the Soviet farms, the backbone of the reconstruction of the old order in the countryside. After them will follow the multitude of collective farms, as the bulwarks of the new movement in the countryside. The combined work of these two systems is creating the conditions for the complete collectivization of all regions of the U.S.S.R.[18]

[15] Stalin, J., *Voprosy Leninisma* (*Problems of Leninism*) (Moscow, 1934, 9th ed.), p. 316.

[16] *Ibid.*, p. 320.

[17] *Ibid.*, p. 321.

[18] *Ibid.*, p. 545.

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The State Farm Plan and Its Drawbacks

In July 1928, the Central Committee of the Communist Party announced its decision to proceed with the plan suggested by the Fifteenth Party Congress and championed by Stalin. It approved the Instructions to organize during the next four or five years new large state grain farms in regions of the Soviet Union where they could not infringe upon the peasant holdings. By the end of the period, "their yearly commercial grain production would amount to 1,800,000 short tons." [19] All state grain farms were to be administered by the "Grain Trust", organized for this purpose by a special decree of the Council of People's Commissars.[20]

The "Grain Trust" planned to organize during the period 1929-1933 farms covering an area of 15,000,000 acres.[21] The cost of carrying through this program was estimated at between 350 and 400 million rubles, while the investment in all the state farms, both grain and non-grain, was to reach a total of one billion rubles.[22] According to the Five Year Plan, the "Grain Trust" in 1933 was to provide the Soviet Union with 1,728,000 short tons of marketable grain;[23] the quantity of marketable grain to be produced by grain and other state farms from the crop of 1932-33 was expected to reach a minimum of 3,024,000 short tons and a maximum of 3,672,000 short tons, representing from 16 to 17 per cent of the country's commercial grain.[24] This estimate was based on the assumption that the yield would rise from 13.5 bushels per acre in 1927-28 to about 16.5 in 1933, with the area under grain crops in the respective years increasing from 2,500,000 acres to 8,500,000 acres.[25]

[19] "Ob Organizatsii Novykh Sovkhozov" (Concerning the Organization of New State Farms), *Izvestiia*, July 13, 1928.

[20] *Svod Zakonov* (*Code of Laws*), 1928, No. 48, art. 421.

[21] "Piatiletnii Plan Razvertyvaniia Zernosovkhozov" (The Five Year Plan for the Organization of State Grain Farms), *Sovkhoz* (*State Farm*), May 1929, p. 24.

[22] *Piatiletnii Plan Narodno Khoziaistvennogo Stroitelstva Strany* (*The Five Year Plan for the Economic Reconstruction of the Country*) (Moscow, 1930), pp. 273-303.

[23] *Ibid.*, p. 273.

[24] *Ibid.*, p. 329.

[25] *Ibid.*, p. 329.

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The organizers of the state farms maintained that of the farms set up before 1928 only those were profitable where agricultural machinery was widely used.[26] This strengthened the belief in the supreme beneficence of the "Triad of American Machine Technique—caterpillar tractor, combine and truck transportation"—and its revolutionary effects upon agricultural economy.[27] It was assumed that utilization of mechanical power would be particularly advantageous on the farms established in sparsely populated regions, and where large areas of land would have to be broken into cultivation for the first time. The suggestion that at the outset 60 per cent of the work on the farms should be done by mechanical power and 40 per cent by animal power was branded as counter-revolutionary, a scheme devised for no other reason than to slow down the development of the state farms.[28] The decision was that the farms must be thoroughly mechanized.

The introduction of machines alone was not sufficient to meet the needs of mechanized agriculture. There was needed also a labor and supervisory force capable of making proper use of the machines. At the moment, however, the available labor force was accustomed chiefly to a century-old economy of the "sickle and scythe", and the number of trained specialists was too small to satisfy the elementary needs of the farms. These factors assume added significance when they are viewed against the background of the size of the new farms. Unlike those established before 1928, the average size of a new farm was planned at about 95,000 acres. This reflected the view of Commissar of Agriculture Yakovlev, who stated that in the regions of the new state grain farms, "We must have a state farm measured not in tens of thousands of acres but in hun-

[26] Wolf, M. M., "Perspectivy Razvitiia Sovkhozov" (Outlook concerning the Development of State Farms), *Sovkhoz* (*State Farm*), December 1928, p. 20.

[27] Chaianov, A., "Segodniashnii i Zavtrashnii Den Krupnogo Zemledeliia" (The Present and Future of Large-Scale Agriculture), *Ekonomicheskoe Obozrenie* (*Economic Review*), No. 9, 1929, p. 39.

[28] *Stroitelstvo Sotsialisticheskikh Krupnykh Zernovykh Khoziaistv* (*The Organization of Large Socialist Grain Farms*) (Selkolkhozgiz, Moscow, 1931), p. 5.

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dreds of thousands." [29] Lack of experience in managing such huge "grain factories" was admitted, yet those responsible for their establishment were of the opinion that the larger the farm, the smaller would be the overhead expenses, the more economically would labor and machines be utilized and, by this token, the more profitable would be the establishment. The problem of the optimum size of an enterprise was practically disregarded. The chairman of the "Grain Trust" summarized the situation in this manner:

> The problem of an optimum size [of a state farm] in Soviet conditions is only a problem of correct arrangement of mechanical power; or a proper configuration of land subdivisions of the farm, and of efficient intra-farm transportation. The experience of the state farms in the course of almost two years' work proved that all these problems can be solved successfully. Moreover, this experience brought out very clearly that, under the conditions outlined, the larger the farm, the smaller the cost of production.[30]

The problem which confronted the organizers of the state farm was that of selecting eleven million acres of land for the enormous enterprises. For the most part the best land in the principal grain-growing regions of the Soviet Union was already cultivated by the peasants. The new farms had to be established, therefore, on unoccupied land reserves of the state, located in the Ukraine, Crimea, North Caucasus, Kazakstan, Siberia, Ural, Lower and Middle Volga. It was expected that with a sufficient volume of precipitation this land when planted to grains only, and chiefly to wheat, would yield good crops during the next five to ten years. The problem of maintaining the fertility of the soil was not given any consideration. The single crop system was viewed as a "natural loan" from the land, justified by the necessity of "deriving maximum results

[29] Yakovlev, I. A., from report read before the XVI Communist Party Congress. *Ekonomicheskaia Zhizn* (*Economic Life*), July 12, 1930.

[30] Gerchikov, M., "Itogi Stroitelstva Zernosovkhozov" (Results of the State Grain Farm Development), *Na Agrarnom Fronte* (*On the Agrarian Front*), No. 5, 1930, p. 106.

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from grain farming and [the need] for a more rapid capital accumulation." [31]

Such were the expectations despite the presence of a number of factors, which did not augur well for the realization of the program. To begin with, since the density of population in the regions of the new state farms was only from 11 to 14 persons per square kilometer, the labor supply had to be drawn from distant and more densely populated sections of the country.[32] Furthermore, a number of regions, particularly those of Kazakstan and the Lower Volga, suffered from dry winds which destroy vegetation at the most important period of growth. Second, only one third of the land set aside for the state farms was fertile black soil; the remaining land, while suitable for grain cultivation, was of an inferior quality.[33] Finally, and most important, a considerable part of the land was in semi-arid zones. Under such conditions "the yield of the crops is determined not by the presence of the food elements in the soil, as in the case of the central and northern parts of the Soviet Union, but by the quantity of rainfall and of moisture in the soil." [34] But the volume of rainfall was small, as may be seen from the following figures: 52 per cent of the land set aside for the state farms had an average precipitation of 11 to 12 inches, 28 per cent of 12 to 14 inches, and only on 20 per cent of the state farm land was the precipitation above 14 inches.[35] It should be noted in this connection that in the United States the total annual precipitation of 15 inches is given as the lower limit of normal grain crop production. The Soviet Commissar of Agriculture pointed out that for these reasons the danger of recurring crop failures was ever present

[31] Grekov, P., "Plan Organizatsii Zernovykh Sovkhozov i Kontrolnye Tsifry na 1928-29" (Plan for the Organization of State Grain Farms and Control Figures for 1928-29), *Ekonomicheskoe Obozrerie* (*Economic Review*), September 1928, p. 49.

[32] *Ibid.*, p. 49.

[33] Metelev, A., "O Novykh Zernovykh Sovkhozakh" (Concerning the New State Grain Farms), *Na Agrarnom Fronte*, No. 9, 1928, p. 85.

[34] Tulaikov, N. M., "Agriculture in the Dry Regions of the U.S.S.R.", *Economic Geography*, January 1930, p. 57.

[35] Metelev, A., *loc. cit.*

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in large sections of state grain farm area. In his opinion the only possible guaranty against it "consists in the expansion of the sown area and in the accumulation of food and seed reserves." [36]

Quantitative Aspects of the Plan in Operation

After the inauguration of the Plan the work of setting up state farms proceeded at top speed. The driving force which the Soviet government displayed in collectivizing the individual peasant holdings found its counterpart in this movement. How it was reflected in the expansion of the state grain farms may be gleaned from the fact that between the end of 1929 and the end of 1930 the "Grain Trust" plan was revised upward four times, finally raising the 1931 and 1932 crop areas to 11 million and 22 million acres, respectively.[37] The farms were of enormous size, namely, an average of 287,000 acres per unit.

The larger crop area led to a revision of the grain delivery figures. The Central Committee of the Communist Party expected that in 1931 the state grain farms would turn over to the government a total of between 2,700,000 and 2,880,000 short tons of grain,[38] instead of the 523,000 short tons delivered in 1930,[39] and 1,800,000 expected by 1932 or 1933. The work of the grain farms, both actual and planned, expressed chiefly in the number of acres, tractors, combines and amount of invested capital, was viewed by the Soviet leaders as evidence of a successful state farm development. This prevailing attitude was expressed by Stalin when he said, "Let the bourgeois scribblers and their opportunistic understudies keep on chattering that it is impossible to fulfill and overfulfill the Five Year Plan of state farm work in three years." [40]

[36] Yakovlev, *loc. cit.*

[37] "Stenographic Report of the XVI Congress of the Communist Party", *Ekonomicheskaia Zhizn* (*Economic Life*), July 15, 1930.

[38] Gerchikov, M., "Osnovnye Problemy Stroitelstva Zernosovkhozov", (Basic Problems in State Grain Farm Organization), *Na Agrarnom Fronte*, No. 3, 1931, p. 5.

[39] *Selskoe Khoziaistvo S.S.S.R., 1935* (*The 1935 Agricultural Yearbook of the U.S.S.R.*) (Moscow, 1936), p. 729.

[40] Stalin, J., *op. cit.*, p. 516.

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Qualitative Aspects of the State Farm Work

The Communists held that the acceleration of the state farm movement, simultaneously with the rapid collectivization of peasant holdings, augured well for an early solution of the grain problem. But in the long run its solution depended not only upon the rapid increase of acreage and equipment, but even more so upon the manner in which these were being utilized. The real criterion of the state farm progress, therefore, must be looked for in the quality of their work. Viewed in this light, their work in 1930 revealed such serious shortcomings that one may well question the wisdom of setting up enormous agricultural enterprises at breath-taking speed in conditions prevailing at that particular time.

The work of the grain farms was discussed at length at the first All-Union Conference of the state farm managers.[41] It was pointed out that the planning done by the central management of the "Grain Trust" was faulty because it disregarded the variable conditions in the different regions in which the farms were set up. The sowing plan suitable for the North Caucasus, for instance, was not suitable for Siberia. Yet, "whether the state grain farms are organized on the Pacific", a manager of a farm remarked, "or on the shores of the Black Sea or on the North Pole, we all get uniform standards."[42]

Over 50 per cent of the grain farms were late in carrying out their work of plowing, sowing and harvesting.[43] The cost of grain production was 26 per cent above the planned cost.[44] This was due to the fact that the productivity of labor was 48 per cent lower than expected,[45] and that the average yield on grain farms was only 9.5 bushels per acre.[46] This was a fairly

[41] *Stroitelstvo Sotsialisticheskikh Krupnykh Zernovykh Khoziaistv* (*The Organization of Large Socialist Grain Farms*).

[42] *Ibid.*, p. 34.

[43] *Ibid.*, p. 82.

[44] Kulikov, P., "Sovkhozy Na Krutom Pod'eme" (The Sharp Advance in the Development of the State Farms), *Na Agrarnom Fronte*, No. 9, 1930, p. 87.

[45] *Stroitelstvo Sotsialisticheskikh Krupnykh Zernovykh Khoziaistv* (*The Organization of Large Socialist Grain Farms*), p. 181.

[46] *Ibid.*, p. 77.

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high yield for an average year in the dry zone in which most of the state farms were located, but it was claimed that the year's climatic conditions had been so favorable as to permit a yield close to the planned 13 bushels per acre if the land had been properly cultivated.[47]

The organizers of the state farms were so preoccupied with the problem of setting up farms and increasing their acreage that little attention was paid to the creation of satisfactory working conditions. The outcome was that in 1930 the labor turnover on the state farms was as high as 75 per cent.[48] The use of animal power for basic field work was practically ruled out, but the number of tractors could not keep pace with the rapidly expanding acreage. For this reason, during the 1930 season each tractor was in use for an average of 2,311 hours,[49] instead of 500 to 600 hours as on an American farm. This intensive use was cited in proof of the supremacy of large-scale farming over small. But operated by unskilled workers, who, on occasion, as one farm manager pointed out, "run away from the mere sound of a tractor," [50] the machines frequently broke down and in general rapidly deteriorated. As a result, 89 per cent of all tractors in 1930 required complete overhauling, although most of them were worked only one season. As a matter of fact it was claimed that only 50 per cent of the tractor capacity was utilized.

Another major shortcoming of grain farm management was in viewing the tractor as a fetish, capable of solving all the important problems connected with the state farm development, including that of a higher yield. This over-simplification of the problem did not escape the attention of experts familiar with the semi-arid regions. Professor Tulaikov pointed out,

> I understand very well that the utilization of the tractor is an exceedingly important aspect of the work to which we have

[47] *Ibid.*, p. 187.

[48] *Ibid.*, p. 187.

[49] Teriaeva, A. P. (ed.), *Sovkhozy k XV Godovshchine Oktiabria* (*State Farms on the XV Anniversary of October*) (Selkolkhozgiz, Moscow, 1932), p. 103.

[50] *Stroitelstvo Sotsialisticheskikh Krupnykh Zernovykh Khoziaistv* (*The Organization of Large Socialist Grain Farms*), p. 32.

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> to pay particular attention. It must be stressed, however, that we are not building grain farms in order to utilize tractors, but are utilizing tractors in order to receive a certain output of grain. . . . I believe that the farm as such has the right to exist and is not a mere adjunct to the tractor. Granting this premise, agricultural science is entitled to more consideration.[51]

He suggested a diversified agricultural economy as opposed to monoculture—wheat. The introduction of a complex crop rotating system was expected to conserve the fertility of the soil and to exterminate the weeds which had been infesting the state farm fields very rapidly. Such a program, however, did not appeal because it called for a decrease of acreage under grain at a time when the Soviet government was expecting to get from the farms a volume of grain amounting to 2,700,000-2,880,000 short tons. It was with this consideration in mind that the chairman of the "Grain Trust" declared that "Talk concerning the transformation of our state grain farms into diversified farms must be stopped." [52]

The underlying policy of narrow specialization was to remain unchanged; while it was admitted that the tendency to expand the size of the state farms was not always good,[53] the emphasis on large size units continued. Qualitative aspects of the farm work, however, were to be stressed much more strongly. According to the resolution drawn up by the Sixth Soviet Congress of the U.S.S.R.: "Along with tasks pursuing the quantitative development of the Soviet farms (the growth of the area under cultivation, and the increase of the numbers of live-stock), . . . tasks of improving the quality of Soviet farm work should in future be put in the center of attention." [54] In this manner the Soviet farm leaders expected to increase the average yield per acre by 20 per cent in 1931,[55] at the same time decreasing the cost of production by 20 per cent.[56]

[51] *Ibid.*, p. 90.

[52] *Ibid.*, p. 103.

[53] *Ibid.*, p. 70.

[54] Resolution of the Sixth Congress of Soviets in the U.S.S.R., held in Moscow during March 8-17, 1931.

[55] *Stroitelstvo Sotsialisticheskikh Krupnykh Zernovykh Khoziaistv* (*The Organization of Large Socialist Grain Farms*), p. 197.

[56] *Ibid.*, p. 187.

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In 1931 the state grain farms cultivated a total of 10,753,000 acres as against 2,931,000 acres in 1930. Nearly 96 per cent of this area was seeded to grains, and 72 per cent of the cultivated land was under wheat.[57] The spring sowing campaign showed an improvement over that of the previous year, and it was expected that the crop harvesting would show similar results, and that there would be no delay in supplying the government with the specified farm output.[58] However, these expectations fell short of realization.

Unfavorable weather conditions in 1931 reduced the crop considerably. The average yield of grain per acre on all the grain farms was only 5 bushels instead of 15 bushels as planned.[59] For this reason they turned over to the government only 1,152,000 short tons of grain,[60] or only 40 per cent of the expected volume. But even this amount was considerably greater than the state farms could afford to part with. On February 17, 1932, not long after the completion of the grain collections, the Soviet government had to distribute among the state farms, in the form of loans, a total of 201,000 short tons of grain for seeding purposes.

The failure of the grain deliveries, and the need of seed loans, were but a reflection of the poor yield, attributed by local authorities to the excessive rains in the North Caucasus and to the drought in Siberia, Ural, Bashkirii and Middle and Lower Volga. This opinion, however, was greatly at variance with the decree "On the Work of State Grain Farms", issued jointly by the Council of People's Commissars of the U.S.S.R. and the Central Committee of the Communist Party,

[57] *Selskoe Khoziaistvo S.S.S.R., 1935* (*The 1935 Agricultural Yearbook of the U.S.S.R.*), p. 728.

[58] *Sotsialisticheskaia Zernovaia Fabrika* (*Socialist Grain Factory*), No. 14, 1931, p. 1.

[59] Iurkin, T., "Vypolnit Postanovlenie Tsentralnogo Komiteta i Sovnarkoma o Zernosovkhozakh" (To Fulfill the Order of the Central Committee of the Communist Party and the Council of People's Commissars concerning the State Grain Farms), *Sotsialisticheskaia Rekonstruktsia Selskogo Khoziaistva* (*Socialist Reconstruction of Agriculture*), No. 2, 1932, p. 145.

[60] *Selskoe Khoziaistvo S.S.S.R., 1935* (*The 1935 Agricultural Yearbook of the U.S.S.R.*), p. 754.

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on November 27, 1931. The government was aware of the ill effects of the drought, but it insisted, nevertheless, that the real cause of the difficulties was not the inclement weather but the "crying mismanagement and unheard-of criminal attitude toward government property." Huge grain losses during harvesting and threshing were attributed to the following factors: wilful underestimate of the yield in order to reduce deliveries; the distribution among state farm workers of more grain in the form of bread rations than the government norm called for; "state farm directors who view their obligations to deliver grain to the state as a matter of secondary importance, the fulfillment of which may be delayed until the needs of the farms have been fully taken care of", and, finally a "thoroughly unsatisfactory cultivation of the land." The last charge can be readily understood. In 1931 the area under crops was three and a half times larger than in 1930, but the state farms were not sufficiently equipped for the task, particularly since the work had to be carried on in the midst of difficulties caused by a lack of skilled labor, poor labor discipline and poor management.

In order to combat such developments, the Soviet government concentrated its attention upon the organizational structure of the farms, the labor problem and the problem of wages.

Problem of Management

With respect to the first, the government decided to reorganize, within a period of two months, the entire structure of the state grain farms, along the lines indicated in the decree issued by the Commissariat for Agriculture, on August 25, 1931. It called for decentralization of management by setting up a number of regional offices instead of one central office in Moscow. The vast expansion of the farms since 1929 made it impossible to direct work from one center while "the problem of improving production, raising the yield, and introducing crop rotation systems, wherever necessary, and creating a permanent labor force, demanded a closer contact between the operating center and the state farms." [61] With this end in

[61] O Reorganizatsii Zernotresta (Concerning the Reorganization of the Grain Trust), Decree of the Commissariat for Agriculture, August 23, 1931.

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view, the decree of 1931 provided for the establishment of nine regional grain trusts, each one to carry on the operating functions formerly exercised by the "United State Grain Farm Trusts". Their duty was to plan, finance, supply and dispose of the farm output. The decree provided also for the appointment of a special comptroller or inspector with wide powers for each state farm, responsible solely to the Commissar for Agriculture of the Soviet Union. This brought about a definite abridgment of the rights and privileges of the directors of the farms.

The system just described was abolished in 1935.[62] The trusts were looked upon now as barriers hampering the direct contact between the Commissariat of State Grain and Livestock Farms [63] and the individual farms of which it was composed. Hence, the decision to liquidate the system of trusts, and to put the farms under the direct supervision of the Commissariat. The rights of the directors of the farms were greatly extended. Within certain limitations imposed by the general state farm plan, the director had the right to manage the farm single-handed as he saw fit, with but two exceptions, he had the full right of "hiring and firing." In short, the director was to become the real "boss" of the state farm responsible to the authorities in Moscow.

The reorganization along these lines fell short of expectations. Instead of the meddlesome interference with management on the part of the regional trusts, this was done now by the Commissariat from Moscow. The close supervision of each state farm function "literally froze every initiative on the part of a farm manager." [64] The Commissariat was, therefore, decentralized once again through the organization of State Grain

[62] O Reorganizatsii Narodnovo Kommissariata Zepnovykh i Zhivotnovodcheskikh Sovkhozov (Concerning the Reorganization of the People's Commissariat of Grain and Livestock State Farms), Decree issued by the Central Executive Committee and the Council of People's Commissars of U.S.S.R. on November 28, 1935, *Pravda*, November 29, 1935.

[63] Organized on October 1, 1932.

[64] Temkin, M., "Bez Plana (Without Plan), *Izvestiia*, September 22, 1936.

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Farm Commissariats in each constituent Republic,[65] in addition to the Federal Commissariat of State Grain Farms. Some of the grain farms fell under the jurisdiction of the Comissariats of the Republics, while others were retained under the sole jurisdiction of the Federal Commissariat. The latter exercises its supervision through two separate Production Territorial Administrations: one dealing with the farms of the southern and central districts of the country, and the other with those located in the east and Siberia.[66] This change was expected to shift a greater degree of responsibility for the state farm work upon the republics and regions, make possible a more thorough study of the needs of each state farm, and bring about a management more nearly in accord with the requirements and possibilities of each farm.

Crop Rotation

As part of the reorganization it had been decided to pay more attention to the problem of agricultural science. The application of a crop rotation system and the practice of fallowing was urged in order to raise the yield and improve the soil fertility, providing, however, that these would not infringe upon the grain production of the state farms.[67] This lukewarm attitude toward better agricultural technique persisted for some time.

After 1932 the government emphasized that the central problem of the country's agricultural development was not extension of the area under crops, but better cultivation and higher pro-

[65] *Konstitutsia Soiuza Sovetskikh Sotsialisticheskikh Respublik* (*Constitution of the Union of Soviet Socialist Republics*), adopted on December 5, 1936, Art. 83.

[66] O Strukture Narodnogo Kommissariata Zernovykh i Zhivotnovodcheskikh Sovkhozov S.S.S.R. (Structure of People's Commissariat for Grain and Stock Raising State Farms of the U.S.S.R.), Decree issued by the Soviet government on February 15, 1937.

[67] Kokhan, M. F., "Sovkhozy k XV Godovshchine Oktiabria" (The State Farms on the XV Anniversary of October), *Sotsialisticheskaia Rekonstruktsia Selskogo Khoziaistva* (*Socialist Reconstruction of Agriculture*), No. 11-12, 1932, p. 47.

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ductivity.[68] One of the concrete measures suggested in this connection was the provision that, "in 1933 the Commissariat for Agriculture should introduce a crop rotation system in all state and collective farms."[69] Yet, the necessity of procuring a maximum volume of grain from the farms was also responsible for the decision that, "in certain regions the introduction of crop rotation must go hand in hand with an extension of acreage under grain."[70]

Size of Unit

The results of the work cast some doubt upon the advisability of setting up farms approximating 200,000 acres each. The "gigantomania" originally displayed was now officially censured. This did not imply any change in the Communist attitude toward large-scale farming; it simply meant that, since under the prevailing conditions only one fifth of the area of such huge farms was cultivated, the size of the farms had to be reduced.[71] But in the future, the director of the "Grain Trust" remarked, "when we have learned to utilize correctly the means of production, train the necessary personnel and master the technique of farming, the possibility of increasing the size of the grain farms is not excluded."[72]

It was decided that meanwhile the maximum size of a state farm should not exceed 140,000 acres, and that the existing farms should be reduced in size accordingly.[73] Moreover, a considerable acreage was pronounced unfit for grain cultivation. The result was that in 1932 the total area of the state grain farms amounted to 32 million acres instead of 37 million acres in 1931, while the number of farms increased from 182 in 1931 to 228 in 1932.[74]

[68] O Meropriiatiiakh Po Povyshemiiu Urozhaiia (On Measures concerning the Increase of Yield), Decree issued by the Council of People's Commissars of the U.S.S.R. and Central Committee of the Communist Party, September 29, 1932.

[69] *Ibid.*, par. 4.

[70] *Ibid.*, par. 4.

[71] Iurkin, *loc. cit.*, p. 147.

[72] *Ibid.*, p. 147.

[73] O Reorganizatsii Zernotresta (Concerning the Reorganization of the Grain Trust), Decree of the Commissariat for Agriculture, August 23, 1931, par. 7.

[74] *Selskoe Khoziaistvo S.S.S.R., 1935* (*The 1935 Agricultural Yearbook of the U.S.S.R.*), p. 728.

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The sections into which the state farms were subdivided were also to be reduced to a cultivated area ranging from 14,000 to 17,000 acres. But the reorganization went farther than merely reducing the size of a section. The latter, supervised by a special manager, was to become a permanent, full-fledged production unit of the farm, with a permanent technical and labor force, and with the necessary equipment permanently assigned to it. This production unit was to have its own yearly plan of work, prepared by the manager of the state farm in collaboration with the manager of the unit, its own accounting, and within the limits of the plan it was to utilize both human and physical resources as it saw fit. With all this, the Soviet state farm leaders insisted that a production unit was by no means a miniature state farm; that the state grain farm which was composed of several units remained an enterprise under a single direction and management. This, in their view, was determined by the centralized system of repair shops, transportation, capital investment, centralized supply and workers' training, as well as by the centralized financing and planning of the work for all the production units of the farm.

Organization of Labor

One of the main problems confronting the farms was the organization of the labor force in order to increase its productivity. This could be easily achieved, the government believed, provided each worker knew the nature of his task and the amount of work that was expected of him, and that his wages were based on the principle of payment according to the quantity and quality of his work. The Soviet government decided to bring these elements into full play through the organization of "labor brigades" and the institution of a piece-rate-premium wage system.

As in the case of collective farms, the entire labor force of a state farm is divided into a number of permanent groups or "brigades" under the supervision of a "brigadier" or foreman. Each brigade performs all the work on a definite section of the field assigned to it and is held responsible not only for the quality of the work but also for the condition of the imple-

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ments with which it is entrusted. The number of brigades on a farm and the size and structure of the individual brigades vary, depending upon the work assigned, the time of completion, the type of culture, the configuration and location of the assigned field and the means of production available.

The number of workers on the state grain farms increased from 125,000 in 1931 to 218,000 in 1934.[75] The labor force consists of permanent (more skilled) and seasonal (less skilled) workers. By 1936 the latter group made up 37 per cent of the total number of workers on the state grain farms. The attempts to reduce the number of seasonal workers to a minimum and to put an end to the high labor turnover among the skilled workers, in conjunction with the extensive mechanization of the farms, augur well for the emergence of a new type of skilled agricultural workers in the Russian countryside.

Wages

The effectiveness of the labor organization of the state grain farms depended upon the ability to attract and keep a permanent labor force. This was of paramount importance, because after 1930 the labor turnover on the state farms was even greater than before that year. During the first seven months of 1931, for instance, the turnover of directors was estimated at 30 per cent; engineers, 68 per cent; agronomists, 50 per cent; repair shop supervisors, 40 per cent; while in the case of tractor drivers and other skilled workers the figure on many farms was close to 100 per cent.[76] Thus it was "difficult to meet a tractor driver who had worked on the same farm two or three seasons in succession."[77]

The Soviet government held that the existing wage system, which failed to take into account the variations in skill and ability of the workers, caused good and poor work to be equally rewarded. It was decided, therefore, to do away with such a

[75] *Ibid.*, p. 728.

[76] "Ustranit Tekuchest Kadrov" (Doing Away with Labor Turnover of Skilled Workers), *Sotsialisticheskaia Zernovaia Fabrika* (*Socialist Grain Factory*), No. 18, 1931, p. 1.

[77] Teriaeva, A. P. (ed.), *Sovkhozy k XV Godovshchine Oktiabria* (*State Farms on the XV Anniversary of October*), p. 107.

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wage policy and to proceed on the assumption that some of the main difficulties on the state grain farms could be overcome through emphasis upon the material incentive. The principle of "whoever produces more goods and of a better quality will receive more" had been finding wide application in industry; it was being introduced into collectives and it remained now to extend it to the state farms. This system was applied not only in cases in which the individual's output could be measured, but also in cases in which such individual measurement was not possible. In the case of a supervisor, for instance, increased production or improved work of the group for which he was responsible was to be rewarded by special bonuses in addition to the regular monthly salary.*

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* To be concluded in the next number of this review.—Ed.

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CONCEPTS OF TAXABLE INCOME I

The German Contribution

THE absolute load carried by federal and state net income tax bases has increased rapidly since 1929.[1] The rise in income tax rates in the face of adverse economic conditions has inspired numerous protests. Complaints of taxpayers, in conjunction with a few spectacular cases of alleged income tax avoidance[2] and a substantial decline in yields,[3] have elevated the problems surrounding the taxation of net income to issues of national importance.

One of the many problems involved is concerned with the formulation of concepts of income adequate for purposes of public policy. The formulation of such concepts is not the exclusive responsibility of students of economics. Professional economists, by virtue of their preoccupation with a limited sector of the social universe, can be expected only to clarify some of the issues involved and to outline some of the alternatives available to the legislator.

Unfortunately, the contributions which American and foreign students of economics have made toward the formulation of concepts of taxable income have never been brought together.[4] This study represents an attempt to present to the

[1] This article has been made possible by a grant from the Council for Research in the Social Sciences. The task was undertaken under the direction of Robert Murray Haig and Carl Shoup of Columbia University, to whom the present writer is indebted for generous aid and counsel.

[2] *New York Times*, May 26, 1933, p. 1; June 7, 1933, p. 1; June 10, 1933, p. 7; June 13, 1933, p. 40; June 16, 1933, p. 18; March 13, 1934, p. 2; May 5, 1934, p. 9.

[3] *Annual Reports of the Secretary of the Treasury* for the fiscal year ended: June 30, 1929, p. 173; June 30, 1930, p. 202; June 30, 1932, p. 159.

[4] Legal students of income taxation seem to labor under the impression that economists have failed to give extensive thought or study to the subject in hand. In 1931, e. g., Messrs. Miller, Hendricks and Everett, attorneys-at-law,

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American reader a critical examination of the principal concepts of income advanced by German, Italian and American economists. It may serve not only to correct the impression that economic literature in this field is limited to a few casual remarks but also to challenge the dogmatism of some of the proponents of the various concepts. In any case, it will certainly demonstrate that no "general agreement" exists among economists regarding the content of "the" concept of income.[5]

The selection of the economists has been determined by two considerations. In the first place, it was decided that to be eligible for selection, a student would have to be a member of a culture group whose economic and fiscal institutions roughly approximated our own. On this basis American, British, French, German and Italian students qualified. In the second place, it was considered advisable to confine detailed consideration to those groups of investigators whose contributions did not represent a mere collection of casual comments. This latter principle eliminated treatment of the contributions of British and French scholars.

A survey of the French literature indicated that, in the absence of a net income tax in the French fiscal system until recently, few Frenchmen had given evidence of more than a passing interest in the subject and they had largely confined themselves to a simple restatement of the contributions of their German predecessors.[6]

observed: ". . . most economists have confined their discussions of income to a few passages in textbooks on economics and articles in learned journals." Miller, R. N., Hendricks, H., Everett, E., *Re-organizations and Other Exchanges in Federal Income Taxation* (New York, 1931), p. 9.

[5] For a brief exposition of this point of view, *cf.* Lutz, H. L., "Should Capital Gains Be Taxed As Income?", *Bulletin of the National Tax Association*, vol. 22, no. 5, February 1937.

[6] Cf. Koenig, G., *Un Nouvel impôt sur le revenu* (Paris, 1883); Guyot, Y., *L'Impôt sur le revenu* (Paris, 1887); Raynand, A., *Les Réformes fiscales . . .* (Paris, 1888); Roche, J., *Contre l'impôt sur le revenu* (Paris, 1896); Lauriot, E., *Étude sur l'impôt, sur le revenu* (Paris, 1898); Villey, E., "De l'exagération des critiques addressées à notre système d'impôts", *Revue D'Economie Politique*, Juillet-Aout, 1896; Meyer, H., *Die Einkommensteuerprojekte in Frankreich bis 1887* (Berlin, 1905); Caillaux, J., *Les Réformes fiscales* (Paris, 1905); Gauthier, A. E., *La Réforme fiscale par l'impôt sur le revenu* (Paris,

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The British, though they look back upon a century and a half of income tax experience,[7] apparently have never undertaken—in a continuous and systematic way—to develop general concepts of income. No evidence has been discovered which would lead one to suspect that the Inland Revenue definition of income has ever been seriously questioned by British students.[8] Alfred Marshall accepted it[9] and Pigou did not quarrel with it.[10] Even the Royal Commission on the Income Tax (1920), which made a comprehensive study of income taxation in Great Britain, did not attempt the formulation of a general concept of income. By way of introductory remark, the Commissioners observed: " . . . the plan adopted has been not to attempt a general covering definition of income, but to define income that falls under each of these [referring to schedules A, B, C, D, E] divisions." [11]

Though the British did not make a contribution to the literature of the concept of income which is as significant as

1908); Mouquet, C. de, *La Réforme des impôts sur les valeurs mobilières* (Lille, 1908); Petiot, L., *Projet d'impôt global et progressif sur le revenu* (Paris, 1908); Vogel, E. H., "Die direkten Steuern Frankreichs und ihre Reform", *Finanz-Archiv*, vol. 31, 1914, p. 497; Pupin, R., *Richesse privée et finances françaises de l'avant-guerre à l'après-guerre* (Paris, 1919); Rompe, F., *Die ideengeschichtliche des Einkommensteuerproblems in Frankreich* (Leipzig, 1930).

[7] Magill, R., Parker, L. H., King, E. P., *A Summary of the British Tax System with Special Reference to Its Administration* (Washington, 1934), p. 2.

[8] The acquiescence of British economists may be explained in terms of their favored type of analysis. Early nineteenth-century economists were preoccupied with analysis which ran in terms of factorial distribution. *Cf.* Clark, J. M., "The Socializing of Theoretical Economics", in *The Trend of Economics*, Tugwell, R. G. (editor) (New York, 1924), pp. 73 *et seq.* In the same volume, *cf.* Knight, F. H., "The Limitations of Scientific Methods in Economics", pp. 229 *et seq.*; Veblen, T., "The Preconceptions of Economic Science", in *The Place of Science in Modern Civilization* (New York, 1919), p. 82. Also, Keynes, J. M., *The General Theory of Employment, Interest and Money* (New York, 1936), chap. 11. As will subsequently appear, those students who have contributed substantially to the concept of income literature have placed considerable emphasis upon "personal" rather than functional distribution.

[9] Marshall, A., *A Memorandum on Imperial Taxes*, ch. 9528, p. 112.

[10] Pigou, A. C., *A Study in Public Finance* (London, 1928), p. 98.

[11] *Report of the Royal Commission on the Income Tax*, London, 1920, p. 4.

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that of American, German and Italian students, some British economists have thrown penetrating light upon germane problems. They will be introduced in connection with the presentation of the contributions of their "foreign" colleagues whenever possible.

In the discussion of the American, German and Italian theories, the order has been determined by conceptual affinity. The exposition of the contribution of the German economists precedes the discussion of the concepts of American and Italian students. Techniques and definitions of the Italian investigators, in turn, are more meaningful after perusal of the concepts of American scholars. This choice suggests itself, because as a matter of chronological sequence the basic contributions in the different countries were made in the order indicated. In fact, at times there was conscious, duly-accredited "borrowing" of the basic approaches and tools from antecedent "foreign" writers. By way of preliminary caution, however, it is urged that the order of presentation is not to suggest an evolutionary sequence. If a general orientation may be suggested, it would seem more appropriate to think of the different national contributions, though related, as distinct by virtue of focus and emphasis.

In Germany, the major contributions to the literature of the concept of income were made in the period from 1832 to 1892. The economist Hermann (1832)[12] was the first to attempt a concise formulation of a concept of income and the economist-administrator Schanz [13] closed the formal discussion in 1892. During this period, interesting and significant developments occurred in Germany's political, economic and fiscal institutions.

A loose union of political principalities [14] prior to 1871, Germany under Bismarck became a closely-knit federation of states. Much earlier than is commonly realized Germany en-

[12] Hermann, F. B. W., *Staatswirtschaftliche Untersuchungen* (Munich, 1874), *passim*. (This work was first published in 1832.)

[13] Schanz, G. v., "Der Einkommensbegriff und die Einkommensteuergesetze", *Finanz-Archiv*, 1896, p. 1.

[14] Nauman, F., *Central Europe* (London, 1917), pp. 296 *et seq.*

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joyed a rapid industrial growth.[15] The forms of its economic organization, those of private, laissez-faire capitalism, closely resembled our own of the late nineteenth century. But the German development though somewhat more complex because of social legislation [16] was not deflected by anti-trust agitation and regulation.[17] The absence of imperialistic ventures of consequence during this period suggests that the relatively heavy load carried by Germany's fiscal machine at the time when her economists developed their concepts of income was primarily a result of internal industrial expansion. However, it must be noted that the expansion in question took place under a governmental policy which insisted that a relatively large percentage of the non-entrepreneurial costs of production be borne by the state rather than the individual upon whom they happened to fall in the first instance.[18]

In her fiscal mechanism and procedure Germany differed markedly from the United States. In this country, faculty and income taxes were virtually nonexistent throughout the nineteenth century.[19] In Germany, on the other hand, net income taxes were continuously relied upon.[20]

Though the income tax movement was not uniformly successful [21] during the first half of the nineteenth century, it

[15] Dawson, W. H., *The Development of Modern Germany* (London, 1909), *passim.*

[16] Epstein, A., *Insecurity: A Challenge to America* (New York, 1933), pp. xi *et seq.* and Part I.

[17] Beckerath, H. von, *Modern Industrial Organization: An Economic Interpretation* (New York, 1933), *passim.* Also, Leifmann, R., *Cartels, Concerns and Trusts* (London, 1932), pp. 21 *et seq.*

[18] *Cf.* Clark, J. M., *Studies in the Economics of Overhead Costs* (Chicago, 1933, 5th impression), pp. 1-16, 27-30, 33, 361, 376 *et seq.* Also, *idem, Social Control of Business* (Chicago, 1926), pp. 106-110, 451, 465 *et seq.*

[19] Seligman, E. R. A., *The Income Tax* (New York, 1914), pp. 367 *et seq.*

[20] Grabower, R., *Preussen's Steuern vor und nach den Befreiungskriegen* (Berlin, 1932), pp. 230 *et seq.* Also, Moll, B., *Lehrbuch der Finanzwissenschaft* (Berlin, 1930), pp. 522 *et seq.*

[21] In 1811, for instance, Prussia enacted a *Klassen* or *Standessteuer*, a faculty tax assessed against presumed rather than actually determined income, which was imposed exclusively upon the inhabitants of rural districts and small towns. Moll, B., *op. cit.*, p. 447. This faculty tax is not only interesting as a retrogression from the income tax principle, but also because American

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regained considerable momentum upon the termination (1871) of the Franco-Prussian War. Between 1870 and 1910, some nineteen jurisdictions of the Reich, including such economically and politically important states as Prussia and Saxony, incorporated net income taxes in their fiscal systems.[22]

Together with the enactment of net income tax statutes, German legislators, in contradistinction to their Anglo-Saxon confrères,[23] provided for so-called *Ergänzungssteuern* (supplementary taxes). These supplementary taxes were introduced because of a general conviction that income was not an adequate measure of ability. Virtually all income tax laws were sooner or later supplemented by *Ergänzungssteuern* or *Vermögenssteuern* (net-fortune taxes), levies which were measured by the net worth of the taxpayer.[24]

These *Vermögenssteuern*[25] differed from our general property taxes, in that they were not assessed against property as such, but against a given taxpayer's equities (net worth) in property.[26] Again, the German net-fortune tax differs from

income taxes have frequently been justified on the ground that they would tend to ease the tax burden of the rural population. *Cf.* National Industrial Conference Board, *State Income Taxes* (New York, 1930), vol. 1, Preface.

[22] *Finanz-Archiv*, vol. 1, p. 308; vol. 2, p. 382; vol. 7, pp. 603, 611, 643, 559; vol. 10, p. 370; vol. 12, pp. 173, 778, 763, 255; vol. 13, p. 801; vol. 15, p. 355; vol. 16, p. 719; vol. 17, pp. 773, 797, 379; vol. 19, pp. 152, 188, 243; vol. 20, pp. 281, 295; vol. 23, pp. 224, 250; vol. 27, p. 812; vol. 28, pp. 315, 307, 333, 348-349; vol. 29, pp. 810, 836; vol. 31, pp. 419, 465.

[23] *Cf.* Meisel, F., *Britische und deutsche Einkommensteuer* (Tübingen, 1925), "Introduction".

[24] *Cf. supra*, note 22.

[25] The *Vermögenssteuern* should not be confused with the *Vermögenszuwachssteuer*. The latter tax was assessed, at a progressive scale, against land value increments.

[26] The Prussian Ministry of Finance outlined the following case in support of the net-fortune tax: (1) "Income is not an adequate measure of ability-to-pay"; (2) "The income tax cannot afford differential treatment to labor and investment incomes, but such a differential treatment must be insisted upon for reasons of equity"; (3) "A net-fortune tax furnishes the best available fiscal instrument to accomplish the desired differentiation." Prussian Ministry of Finance, "Preussischer Gesetzentwurf wegen einer Ergänzungssteuer", Begruendung, *Finanz-Archiv*, vol. 10, 1893, pp. 370 *et seq.* It should be observed that Moll, as well as von Heckel, supports the position of the

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what is known in England and the United States as the capital levy,[27] in that it is a recurrent impost at a rate low enough to facilitate liquidation out of the current net yield of the equities taxed.[28]

Generally speaking, the net-fortune tax is an interesting modernization of the older property tax *in rem*. In connection with the purpose of the present study it is of particular significance, because it is against the background of this fiscal device that some of the limitations of the concepts of income of German economists must be evaluated.

Prior to the Franco-Prussian War, which coincided chronologically with the widespread introduction of net income and net-fortune taxes in Germany, only four academic economists[29] had attempted to formulate concepts of income. Between 1871 and the turn of the century, some thirteen students[30] of distinction essayed the task. Often their definitions seem to be mutually exclusive. Most of these post-war scholars would be properly described as general economists, with the possible exception of Max von Heckel, who devoted himself primarily to problems of public finance, and Georg Schanz, editor of the *Finanz-Archiv*.

Hermann,[31] the first professional student who ventured a definition of income designed primarily for fiscal purposes, was exceedingly brief in his statement. According to this writer,

ministry. *Cf.* Moll, *op. cit.*, p. 544; Heckel, M. v., *Lehrbuch der Finanzwissenschaft*, vol. 1 (Leipzig, 1907), pp. 404 *et seq.*

[27] Dalton, Hugh, *The Capital Levy Explained* (New York, 1923), *passim.*

[28] For interesting exhibits of forms to be used by the taxpayer for the computation of net income and net-fortune taxes, *cf. Finanz-Archiv*, vol. 8, 1891, pp. 863 *et seq.*; also, Eheberg, K. Th. v., *Finanzwissenschaft* (Leipzig, 1915), pp. 287 *et seq.* Also *cf.* Wueller, P. H., *The Integration of the German Tax System* (New York, 1933), *passim.*

[29] Hermann (1832), Biersack (1850), Schmoller (1863) and Roscher (1869).

[30] Held (1872), Guth (1878), Weiss (1878), Sax (1887), Neumann (1889), Heckel (1890), Schanz (1892), Fürth (1892), Huene (1892), Volke (1892), Schäffle (1895), Schober (1896), Gärtner (1898).

[31] Hermann, F. B. W., *op. cit., passim.*

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> while income is commonly expressed in terms of money, it is apparent that it is not money that is truly income, but the economic goods which money will procure for the individual. When we speak of income, we take it for granted that these economic goods flow with a certain regularity. Income is that portion of an individual's receipts which that individual may consume without injury to his capital stock. Not every expenditure represents consumption and not every receipt represents income. Income is the sum total of goods which come within the disposing power of an individual within a given time interval. These goods may be tangible or intangible.[32]

It would appear that the criteria (or tests) that form the components of Hermann's concept of income [33] are: (1) periodicity ("these economic goods flow with a certain regularity"),[34] and (2) preservation-of-source [35] ("receipts which that individual may consume without injury to his stock").

It would seem that Hermann's concept of income is unsatisfactory because his criteria, singly or in combination, do not

[32] *Ibid.*, p. 297.

[33] Throughout the subsequent exposition it is proposed to differentiate between concepts of income, and income criteria or income tests. The terms "income criteria" or "income tests", which are used interchangeably, are employed whenever a component part of a concept of income is referred to. The above terminological conventions will be used in connection with the presentation and discussion of all contributions, because it is felt that they will facilitate grouping and manipulation.

[34] *Cf. supra.* On the basis of the periodicity criterion, only those accruals which are likely to recur periodically are to be considered income. In connection with this test or criterion, it is useful to differentiate between the "category" and the "recipient" interpretations. On the basis of the "category" interpretation, accruals which are likely to recur if the economy of the group is considered are accorded income. Under the "recipient" interpretation, only such net accruals as are likely to recur with the economy of a specific recipient are treated as income. In passing it should be noted that Professor Seligman apparently introduced the designation "periodicity criterion" (the German equivalent is *Periodizitaetstheorie*) into American public finance literature. Seemingly, however, Professor Seligman did not differentiate between the two interpretations suggested. It is nevertheless felt that the distinction is useful in connection with the analysis of certain concepts to be presented in this study.

[35] On the basis of the preservation-of-source criterion, only that portion of an individual's accruals which may be economically disposed of (consumed or given away) without impairing the individual's net worth constitutes income.

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establish definite limits. In the first place, as regards the periodicity criterion, Hermann fails to differentiate between the "category" and the "recipient" interpretations, leaving the status of windfall gains indeterminate. Again, the preservation-of-source criterion is of doubtful value without carefully elaborated limitations. Capital value is typically conceived of as a function of a series of discounted future income values. Other pertinent factors aside, the present value of a series of anticipated income values is a function of the interest rate. In other words, if the legislator would adopt the Hermann concept, strictly interpreted, he would have to permit the taxpayer a capital maintenance allowance that would vary with changes in rates of interest.

The second attempt to define income was made by the economist Biersack in 1850.[36] Apparently unaware of Hermann's contribution, Biersack approached the problem from a somewhat different point of view. He asserted that it is a generally accepted proposition that "all receipts which flow from the application of an individual's productive power are taxable income." And further,

> according to this principle, all persons who, on the basis of the subsequently formulated definition, receive no true income should be exempt from taxation. . . . Net income is that sum which is obtained when one deducts from receipts the amounts expended for the customary standard of living of an economically productive individual. It is difficult to define what is meant by "customary standard of living". From a practical standpoint, it is virtually impossible to take every individual's particular standard of living into consideration. As a general proposition, it may be said that the recipients of larger incomes should be permitted only the deduction of a smaller percentage of their income than individuals with smaller incomes.[37]

It will be observed that Biersack employs neither Hermann's periodicity nor his preservation-of-source criterion. Instead

[36] Biersack, H. L., *Ueber Besteuerung, ihre Grundsaetze und ihre Ausführung* (Frankfurt am Main, 1850), *passim.*

[37] *Ibid.*, pp. 149 *et seq.*

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he proposes productivity as his sole test,[38] i. e., "all receipts which are derived from the exercise of an individual's productive powers are taxable income."[39]

In view of Biersack's admission that "standard of living" cannot be adequately defined, his concept of income is identical with the productivity criterion. This heavy dependence on the productivity criterion would seem to imply that "economic activity" has been previously defined. However, the author nowhere indicates what definition of productivity he considers pertinent for his purposes. Though the contour of Biersack's concept is too indistinct to permit its use for fiscal purposes, it is interesting to observe that the author, unlike earlier writers on the Continent, as well as in Great Britain, was conscious of the difficulties presented by the notion of "standard of living".

Gustave von Schmoller attacked the problem of defining income at a time when the shadow of income taxation loomed large on the fiscal horizon of Germany.[40] His primary interest was policy. He seems to have been worried lest in the near future the taxation of income overshoot the mark and destroy his country's capital supply. His contribution is an emphatic restatement of the preservation-of-source criterion, a wearisome lamentation embellished with warnings that disregard of this criterion always foretells the doom of the national economy.[41]

Roscher,[42] who wrote during the same decade as Schmoller, incorporated his definition of income into a general treatise on economics. For Roscher,

[38] The exponents of the productivity criterion assert that any accrual, in order to be considered income, must be traceable to "economic activity" on the part of the recipient.

[39] *Cf. supra*, p. 91.

[40] Schmoller, G. v., "Die Lehre vom Einkommen in ihrem Zusammenhang mit den Grundprinzipien der Steuerlehre", *Zeitschrift für die gesamte Staatswissenschaft*, 1863, pp. 52 *et seq.*

[41] For criticism of the preservation-of-source criterion, *cf. supra*, p. 90.

[42] Roscher, W., *Die Grundlegung der Nationalökonomie* (8th ed., Stuttgart, 1869).

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> receipts include all goods which enter the economy of a given individual within a given period of time. The term receipts covers all "comings-in", such as gifts, lottery winnings, windfall gains, and inheritances. Income, however, includes only such receipts as accrue in consequence of the recipient's economic activities. Income is a sum of products and these products may be derived from either the application of labor or the investment of capital. The producer may use these products directly or he may exchange them for other products in order to satisfy his needs . . . the phrase "secondary" or "derived income" should be used to designate incomes which are obtained without the surrender of an economic equivalent.[43]

It will be observed that Roscher's concept of income, like that of Biersack, is in substance the productivity criterion. In the absence of a definition of economic activity or productivity, Roscher's concept of income would seem to be no more useful than Biersack's.

Adolf Held, the next German student to make a study of income, published his findings immediately upon termination of the Franco-Prussian War. Unlike his predecessors, he devoted an entire treatise to its analysis.[44]

By way of a first approximation, Held observes that

> all goods which are necessary to maintain man's labor power must be considered income. Income is the sum total of all economic goods which rational human beings use in the satisfaction of their wants. All rational human beings will endeavor to set aside reserves in order to maintain their capital intact, unless unforeseen emergencies compel them to take a different course. No useful purpose is served by differentiating between gross and net income. It is convenient, however, to refer to that part of a person's income which remains after the person has satisfied his most urgent needs as "clear" income.[45] This distinction is useful because "clear" income may be transmuted into capital, whereas the amount of income spent for

[43] *Ibid.*, pp. 305 *et seq.*

[44] Held, A., *Die Einkommensteuer* (Bonn, 1872).

[45] Subsequently, the term "clear" income was introduced into the American literature by Professor Seligman. *Cf.* Seligman, *op. cit.*, p. 21.

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> other purposes is predetermined by necessities. Again, this line of demarcation cannot be drawn with precision, because it is virtually impossible to determine, even if due consideration be given to the customs and standards of the period involved, the needs and requirements of individuals and families.[46]

Dissatisfied with this first formulation, Held shifts his point of reference and continues:

> In view of the fact that the national income consists of the product of all those who engage in economic activity,[47] it appears that the national income is divided among those who participate in such activities. Only he who has participated in production can be said to have real, actual or primary income. Those whom a "producer" permits to share in the fruits of his labors may be said to have "derived" income. This "derived" income is not income in any significant economic sense. It merely signifies a title to participate in the expenditure of the recipient of primary income.[48]

In the above passage, Held substitutes the productivity criterion for the expenditure criterion previously suggested.

Then, apparently abandoning both these approximations, which are really mutually exclusive, he experiments with a third approach. This time he endeavors to evolve a definition of income via an income-computing technique—a procedure which is somewhat like putting the cart before the horse. After some consideration of the concept of national income, Held argues:

> We have pointed out already that it is virtually impossible to measure the national income with any degree of accuracy. The question now arises whether or not it is possible to compute, with any degree of precision, the income accruing to a specific

[46] Held, *op. cit.*, p. 75. On the basis of this general statement, it might be inferred that Held proposed to identify income with what in our literature is generally referred to as "psychic income". However, contrary to some contemporary American economists who equate "psychic income" and "true income", Held proposed to tax not only consumption expenditures, but savings as well.

[47] Held, like his predecessors, fails to define "economic activity".

[48] Held, *op. cit.*, p. 78.

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individual. This problem is important, because equitable assessment for income tax purposes depends upon the precision with which the income computation has been performed. Unfortunately, however, it must be pointed out that in our attempt to compute individual income, we meet with some of the same difficulties which we encountered when we attempted to calculate national income. In addition the question arises whether or not individual income always and necessarily coincides with national income.[49] Because we cannot calculate national income, it is necessary for us to assume that national income is substantially the sum total of individual incomes. To further delimit the concept of personal income, we must confine the application of the term income, when used in conjunction with the individual economy, to that portion of a person's receipts which that person may expend without impairing his capital stock. Reasonable expenditures, in this connection, include purchases of the necessities of life, outlays necessitated by the individual's social position and old age pension premiums. All these items of expenditure are made for the purpose of satisfying wants and it must be presumed that they do not impair the individual's capital. . . . The above method, however, is not free from defects, because instances may occur where an individual's income is not part of the national income. A manufacturer, for example, may pay his wages and his interest. Upon balancing his books, however, he may discover that he has operated at a loss.[50] Under these conditions, the wages paid to the laborers and the interest paid to creditors are not part of the national income, because they have been drawn from the capital stock of the enterpriser. . . . Another case of the same general type is met with in connection with what we may call "fictitious capital". "Fictitious capital" is represented by "unproductive" loans such as are made coincident to the

[49] This sentence suggests that Held is subscribing to the net product criterion. The net product criterion differs from the productivity criterion in that the first directs attention to the national or group economy, whereas the second is primarily concerned with individual or private economies. On the basis of the net product criterion, only that portion—if any—of an individual's accruals which constitutes a net addition to the group's income partakes of the nature of "true" income.

[50] This seems to indicate that Held proposes to equate national net product and private profit. The setting up of such an equation, however, constitutes a denial of previously attempted distinctions.

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> prosecution of war. In the case of such loans the funds are not put to a productive use and hence the interest paid on the loans does not represent the product of economic activity. Typically that interest is paid out of the public treasury, which in turn is replenished by means of taxes. Such interest payments do not constitute part of the national income. They partake of the nature of "derived" income.[51]

In concluding his last argument, Held restates his position as follows: "Wherever and whenever an individual comes into receipt of a part of the national income, part of that individual's income may be taken by the tax gatherer. In other words, everyone receiving a 'primary' income is taxable." [52]

Income as thus defined does not furnish an acceptable tax base. It is not acceptable for the very simple reason that there is no known technique which would facilitate identification of that part of an individual's "income" which represents net product.[53]

[51] Held, *op. cit.*, p. 103. [52] *Ibid.*, p. 106.

[53] Waiving for the moment the question of the availability of segregation techniques, it should be observed that American fiscal practice has never been concerned with the taxation of "net product" no matter how defined. The purpose of American income taxes is the raising of revenue "in accordance with the respective abilities" of the parties taxed. *Cf. Colonial Records of Massachusetts Bay*, 1853, vol. 1, p. 120; *Acts and Laws of His Majesty's Colony of Rhode Island and Providence Plantations, passim;* Jones, F. R., *History of Taxation in Connecticut, 1636-1776* (Baltimore, 1896), *passim; American State Papers*, Finance, vol. 1, pp. 421 *et seq.;* Wood, F. A., *History of Taxation in Vermont* (New York, 1894), *passim;* "Sketch of Tax Legislation in Maryland", in *Report of the Maryland Tax Commission to the General Assembly* (Baltimore, 1888), Appendix; *South Carolina Statutes at Large*, vol. 2, p. 36 and vol. 3, p. 366; *Report of the Commissioners . . . Relating to Taxation and Exemption Therefrom* (Boston, 1875), *passim; The Congressional Globe*, 37 Cong., 2 Sess., 1862, pp. 1197 *et seq.;* also 37 Cong., 1 Sess., 1861; *ibid.*, 38 Cong., 1 Sess., 1864, pp. 1876 *et seq.; ibid.*, 39 Cong., 1 Sess., 1866, pp. 2783 *et seq.; Report of the Secretary of the Treasury of the United States for the Year Ending June 30, 1861, passim; Public Laws of the Confederate States of America*, 1 Cong., 3 Sess., Act of April 24, 1863; *A Full Report of the Joint Special Committee on Taxation: Recommendations and Codifications Relating to the Laws of Taxation* (Boston, 1894), pp. 33 *et seq.; Report of the Special Commissioner of the Revenue Upon the Industry, Trade, Commerce . . . of the United States for the Year 1869* (Washington, 1869), *passim; Congressional Record*, 53 Cong., 2 Sess., 1894, vol. 26, pp. 572, 415, 1600, 3558 *et seq.;* Adams, T. S., "The Place of the Income Tax in the Reform

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The attempts of Held were soon supplemented by Guth's [54] contribution. Guth's concept of income represents a combination of the preservation-of-source and the periodicity criteria. For Guth income is "any increase in economic ability, which flows with a certain regularity from a given source. The recipient may enjoy income, consume it, or destroy it without impairing his 'stock'. Hence lottery gains, alms and gifts are not income. But alms and gifts to which the recipient has a certain claim are income." [55]

Thus Guth, like his predecessor, Held, does not designate lottery winnings, gifts and alms as income; but where Held justifies exclusion of these items from the income category by reference to the productivity criterion, Guth's rejection proceeds from his subscription to the periodicity criterion.[56] Again, Guth, like Held, differentiates between "primary" and "derived" income; but here, too, the differentiation is justified on different grounds. Guth speaks of "primary" income when "the income source is the property of the income recipient" [57] and of "derived" income when "the income source is not the property of the income recipient".[58] Guth bases his distinction on a legal relationship, while Held distinguishes between the two income forms by reference to economic desiderata.

of State Taxation", *Papers and Discussions, 23rd Annual Meeting, National Tax Association* (Princeton, 1911), pp. 302 *et seq.; Reports of the Wisconsin Tax Commission*, 1919, 1920, etc.; *Final Report of the Pennsylvania Tax Commission to the General Assembly*, 1927, *passim; Congressional Record*, 61 Cong., 1 Sess., vol. 44, 1909, pp. 502, 1692, 1363, 2243, 4285, 4524-4685; Seligman, *op. cit.*, pp. 631 *et seq.;* Federal Income Tax of 1913, *U. S. Stats. at L.*, 63 Cong., 1913-15, vol. 38, Part I, Public Laws, pp. 166 *et seq.*

[54] Guth, F., *Die Lehre vom Einkommen in dessen Gesamtzweigen* (Leipzig, 1878), *passim.*

[55] *Ibid.*, p. 62.

[56] It may be pointed out that Guth adopts what has previously been called the "recipient interpretation" of the periodicity criterion. *Cf. supra*, p. 90. Choice of the "category interpretation" would oblige the author to treat gifts and lottery winnings as income.

[57] Guth, *op. cit.*, p. 687.

[58] *Ibid.*

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Weiss,[59] unlike both Guth and Held, disregards the preservation-of-source criterion and attempts to identify income by the exclusive application of a variant of the periodicity criterion. He approaches the problem as follows:

> The satisfaction of human wants requires a continuous inflow of goods, which is called income. The essential characteristic of income rests on the fact that it furnishes us with a regular source from which we can satisfy our wants. It is not the creation of goods for the satisfaction of human wants that supplies the test by means of which we may identify income. It is the ultimate purpose of all economic activity to facilitate the satisfaction of our wants . . . it is but the origin of income that is conditioned by and varies with the economic functions which a given individual performs.[60]

Weiss's contribution represents a change of basic approach. With one stroke he discards not only the preservation-of-source test, but the productivity and net product criteria as well. Though he still operates with what he calls the periodicity criterion (literary tradition here reveals itself as a potent determinant of the forms of economic analysis), that designation now refers to a process that differs from the phenomenon contemplated by previous writers. The earlier writers, it will be recalled, used that term when they referred to regularly recurring revenue items. Weiss uses the same term to designate regularly recurring expenditure items. In fact, though he retains the terminology of his predecessors, he is actually describing behavior of a different order. Terminology aside, Weiss differs from his precursors in that he was apparently the first German economist to formulate a concept of income of the "disposition" type.[61]

[59] Weiss, B., "Die Lehre vom Einkommen", *Zeitschrift für die gesamte Staatswissenschaft*, vol. 34, 1878.

[60] *Ibid.*, pp. 687 *et seq.*

[61] In order to clarify terminology, it should be noted that henceforth concepts of income shall be designated as being of the "accrual type" whenever they focus attention upon inflow, or to use Alfred Marshall's phrase "incomings". The phrase concepts of the "disposition type", on the other hand, will be used whenever the emphasis is upon "expenditure" or "disposition". In passing it may be pointed out that the only other German author to ad-

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Emil Sax, who wrote about ten years later than Weiss (1887), essayed a synthesis of the contributions of Weiss and earlier writers. For Sax, income is

> that amount of goods which accrues to an individual in consequence of production and exchange activities within a given period of time, which that individual may consume for the purpose of satisfying his wants. . . . The concept "product" relates to goods in the process of production. The concept "income", however, relates goods to the needs and wants of an individual . . . if the capital of a given individual economy is to remain intact, then those parts of the capital which have been used, that is, so to speak, destroyed coincident to the creation of a given product, must be replaced. It is only the residual product that remains after capital replacement has been made which can be considered income.[62]

In the terms of the conventional "tests", Sax's concept of income rests on the preservation-of-source criterion.

The contribution of the economist Neumann, who presented his observations two years after Sax, differs in several respects from that of previous students. In the first place, Neumann critically appraises the works of his predecessors. Second, he takes issue with the income tax practice of his period.[63] Third, his procedure is more systematic than that of those who preceded him.

Neumann opens the discussion by presenting a concept which he regards as faulty but which has merits as a tentative point of departure. He observes,

> Income includes all valuable considerations and benefits that come within the disposing power of a given individual over a given period of time.

vance a concept of income of the "disposition" type was Mombert, who wrote during the World War. *Cf.* Mombert, P., *Eine Verbrauchseinkommensteuer für das Reich als Ergänzung der Vermögenszuwachssteuer* (Tübingen, 1916), *passim.*

[62] Sax, E., *Grundlegung der theoretischen Staatswirtschaft* (Vienna, 1887), pp. 364 *et seq.*

[63] Neumann, F. J., *Grundlagen der Volkswirtschaftlehre* (Tübingen, 1889), *passim.*

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We may perhaps attempt a more definitive fixation of income by introducing the notion of periodicity. This has been previously attempted . . .[64] however, even with the periodicity notion suffixed the concept is not adequate, because (1) as a matter of conventional usage, alms and lottery winnings are not considered income although they may recur; (2) contrarywise, the legislator treats many receipt items as income though they do not typically recur.[65]

Can it be said that the "incomes" of our painters, sculptors and architects are "regular" or "recurring"? Most of these incomes fluctuate considerably. . . . The same may be said of part of the incomes of university professors and public officials, etc. An artist may devote the most productive years of his life to the creation of an outstanding production which will realize an immense price in the market. It would be unrealistic to contemplate the recurrence of such a price. Nevertheless, the price actually realized is treated fiscally as income, and correctly so, because if all receipts of this type were not treated as income, many shrewd merchants would never pay any taxes, whatever.[66]

The above considerations, while suggesting that there is a grain of truth in the periodicity criterion, nevertheless indicate that the exclusive use of that test is not likely to produce satisfactory results. Hence, it is not surprising that students of the subject have searched for additional criteria which, separately or in conjunction with the periodicity criterion, would permit of the formulation of a more satisfactory concept of income.

Some of these searches focused attention upon expenditure. It has been argued that expenditures are, in the nature of the case, continuous. . . . In addition, it has been alleged that expenditure must of necessity coincide with income if a group of individuals is considered.[67]

[64] Guth F., *op. cit., passim.* Also, Weiss, B., *loc. cit., passim.*

[65] It is in connection with the subsequent argument that the distinction between the "recipient interpretation" and the "category interpretation" of the *periodicity* criterion would seem useful. *Cf. supra*, p. 90.

[66] This was written in 1889.

[67] The universal validity of this contention is, to say the least, doubtful. It will be recalled that the writers who previously operated with the notion of national income apparently intended the term to mean what more recently has been referred to as "income produced". *Cf. supra*, pp. 94 *et seq.* Also,

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> From the foregoing consideration, it has been concluded that expenditures would adequately measure income; income being conceived of as that part of an individual's receipts which he may consume without impairing his capital stock.[68]

On the basis of the above observations Neumann concludes that the introduction of anything approximating an expenditure test, even if delimited by such an adjustment as the preservation-of-source criterion, must create embarrassing uncertainty. For, in Neumann's opinión, it is well-nigh impossible to determine "economical" or "just" expenditure.

In an attempt to escape what he considers the dilemma of his predecessors, Neumann suggests a "new" criterion. He believes that the problems posited by the use of the preservation-of-source criterion, may be overcome

> if instead of insisting upon the permanency of a specific source, we attempt to think in terms of source types. That is to say, we should endeavor to think of capital in general and not of a *specific* capital investment as a source of income. If we choose this view, our difficulties are automatically and satisfactorily resolved.
>
> The gains of speculators, merchants, architects and artists; the fees received by professional men, no matter how regularly or irregularly they occur; all must now be considered income, since both are derived from permanent source types. In the one case, their permanent source is represented by "enterprisers' transactions"; in the other, by "professional practice." On the other hand, acceptance of our view[69] would lead to the

Kuznets, S., "National Income", in the *Encyclopedia of the Social Sciences*, vol. 11, pp. 205-224, and *idem, National Income 1929-1932, Senate Document No. 124* (Washington, 1934). It does not require labored argument to show that "income produced", when used as a synonym for national income, does not necessarily coincide with aggregate individual income. In fact, by way of broad generalization, it may safely be said that over a short period of time such as the fiscal year, the two forms of "income" do not even tend to coincide as regards magnitude.

[68] Neumann, *op. cit.*, pp. 210 *et seq.*

[69] In another passage, Neumann refers to his modification of the periodicity criterion as the source criterion. It is apparent that source criterion is but another name for what was previously designated as the "category interpretation" of the periodicity criterion. *Cf. supra*, p. 90. Henceforth, source

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> exclusion of lottery winnings, inheritances and similar gains from the income category, for it cannot be maintained that they flow from permanent sources[70] . . . it would seem that the Prussian income tax has been built around the source criterion. . . .[71]

The source criterion is not as "new" as Neumann seems to believe. It is "new" only if we choose to impute the "recipient interpretation" of the periodicity criterion to the older writers. That imputation, apparently justifiable at times, is mere conjecture in other cases. Furthermore, Neumann limits its application without any supporting evidence whatever, unless his passing reference to current practice in Prussia is accepted as adequate substantiation.

Possibly influenced by the breadth and freshness of Neumann's approach, Schanz,[72] in 1892, presented a concept of income that was more inclusive than any one previously offered by a German writer.

After a brief, preliminary discussion of the concepts "net-profit" and "clear profit", Schanz suggests:

> . . . these concepts ("net-profit" and "clear profit") are functionally related to a given enterprise. The concept of income, however, occupies an entirely different position. The concept of income is related to the economic ability of persons. When we wish to determine an individual's income, we must ask what economic power has accrued to a given person over a given period of time. In other words, we wish to know what means came within the disposing power of a given person, who, during the period in question, neither impaired his capital nor incurred personal debts.

criterion will be used as a synonym for that phrase. Source criterion seems preferable from a purely linguistic point of view, but the other phrase is more useful for purposes of conceptual manipulation.

[70] The permanency of a source is a function of the presence or absence of general cultural change. Capital is a "permanent source" only in a society that takes advantage of the capitalistic mode of production. There seems to be no justification for the assumption that the institution of bequest is a less permanent source of gain than the institution of property. The same is true of lottery winnings.

[71] Neumann, *op. cit.*, p. 115.

[72] Schanz, G. v., "Der Einkommensbegriff", *Finanz-Archiv*, 1896, pp. 1-30.

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We need a concept of income for various purposes. We need it if we wish to study the social structure (classification of individuals into income groups) and possible changes in this structure. We need it again if we propose to familiarize ourselves with the processes involved in the distribution of goods. Last but not least, we require it for fiscal purposes if taxation according to ability is to be an effective principle of our tax practice.

Continuing with his definition of income, by a method of differentiation and elimination, Schanz observes,

income . . . does not belong in the profit category. It is not to be considered the result of accounting conventions. Income is an entity which cannot be severed from a given individual and the satisfaction of his wants . . . the concept of income is but remotely related to production. From these considerations, it follows directly not only that income includes profits realized from the exchange of goods and other business transactions, but that it also covers such good as flows from the enjoyment of one's leisure, the use of one's house or one's garden. It is immaterial whether or not income is actually realized, that is to say, it is immaterial whether or not one actually lives in one's house! Discounting infrequent cases of extravagance, all satisfactions are functions of income. Continuous expenditure implies continuous income. It is for this reason that one is justified in looking upon income as a measuring rod. . . . Income covers and includes a changing multitude of factors. The multifarious forms of income must have but one element in common. They must be reducible to a common denominator, a monetary expression which permits the calculation of an approximate total.

It may be argued that Neumann and Schmoller, at least by implication, have carried the analysis up to this point. If so, we must add to their observations that in order to obtain a figure of significance, the monetary equivalent of advantages derived from the direct use of capital goods, houses,[73] gardens, etc.; the monetary equivalent of income in kind, lottery winnings, capital appreciation, inheritances, etc., must be included.

[73] Already Neumann had observed that this form of income represented taxable ability.

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> For if one falls heir to an estate and consumes its substance, one will not be poorer after having done with it than one was before.[74] In addition, adoption of the concept of income developed above points to the deduction of interest paid[75] and allows for capital depreciation deductions.

Summarizing his exposition Schanz concludes that income may be defined in one sentence as "the net influx of wealth [*Reingewinn*] over a given period of time."[76]

Not content with simply formulating a concept of income, Schanz proceeds to a critical examination of the principal criteria and concepts of his precursors. Challenging the acceptability of the productivity criterion, he queries: "Who could deny that the student who is favored with a stipend and the army officer who is subsidized by his father-in-law have incomes?"[77]

As regards the relevancy of the periodicity criterion, Schanz contends that

> to insist that income be conceived of as regularly recurring net receipts is indicative of superficial observation. Neither sources, nor amounts from given sources are constant in time. Profit, wage and interest rates fluctuate. The merchant makes twenty

[74] It will be noted that Schanz completely abandons the net product criterion, and, on the basis of this passage, the strict and universal interpretation and application of the preservation-of-source criterion as well.

[75] For a comprehensive analysis of the fiscal status of debts and interest payments, *cf.* Heckel, M. v., *Die Einkommensteuer und die Schuldzinsen* (Leipzig, 1890), *passim.*

[76] Professor Robert Murray Haig designates the criterion implicit in this definition as the net accretion test. For convenience of reference, it will henceforth be referred to by that designation. Haig, R. M., "The Concept of Income", in *The Federal Income Tax* (New York, 1921), p. 1.

[77] In addition to the exponents of the *productivity* criterion mentioned previously, the following writers endorsed its use: Haushofer, M., *Grundzügen der Nationalökonomie* (Stuttgart, 1879), p. 55; Schober, H., *Die Volkswirtschaftslehre* (Leipzig, 1896), p. 262; Vocke, W., *Grundzuege der Finanzwissenschaft* (Leipzig, 1894), p. 78; Heckel, *Lehrbuch der Finanzwissenschaft*, vol. 1, p. 202; Liefmann, R., *Ertrag und Einkommen auf Grundlage einer rein subjectiven Wertlehre* (Jena, 1907), p. 23; Lexis, W., "Einkommen", *Wörterbuch der Volkswirtschaft* (Jena, 1911), p. 724; Lotz, W., *Finanzwissenschaft* (Tübingen, 1907), p. 445; Gärtner, F. W., "Über den Einkommensbegriff", *Finanz-Archiv*, 1898, p. 31.

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> thousand marks in one year, loses three thousand during the next and perhaps emerges with a five thousand mark profit in the third year. . . . The periodicity criterion leads to absurd conclusions. . . . If I should give a beggar one mark a day, that beggar, according to the periodicity criterion,[78] would have income. However, if a generous humanitarian should present my beggar with three hundred and sixty-five marks on the condition that for one year he abstain from begging, that beggar would have to be considered as having no income at least for the period of one year. Matters do not improve, if one . . . substitutes "possibility" or "probability of recurrence" for periodicity.

From his critique of the periodicity criterion, Schanz turns to an analysis of the source criterion.[79] He states that

> the impossibility of achieving satisfactory results with the periodicity criterion has led Neumann to employ this concept in a somewhat different manner. Neumann believes that the important desideratum is not continuous flow or regular recurrence of a given income, but the permanence of a given income source. Neumann's income covers all goods, valuable considerations and use benefits [*Nutzungen*] which an individual derives from permanent sources within a given period of time, and which the individual may use in any way he chooses. Subscription to this concept, it is alleged, resolves many difficulties. The objections which may be urged against Neumann's criterion are many. Neumann seems to have anticipated some when he wrote, "nevertheless some uncertainty remains." . . . Some uncertainty remains indeed! When we ask what is meant by the phase "permanent source", we find ourselves in a blind alley. Are capital investments "permanent sources"? Buildings are destroyed, agricultural soil is exhausted, machines become obsolete . . .

[78] In addition to the exponents of the periodicity criterion already recorded, there is reason to believe that the economist Wagner was likewise inclined to adopt it. *Cf.* Wagner, A., *Allgemeine oder theoretische Volkswirtschaftlehre* (Leipzig, 1879), p. 115.

[79] Subsequently the following writers attempted to exploit the possibilities of the "source" criterion: Fuisting, B., and Strutz, G., *Die Preussischen direkten Steuern* (Berlin, 1915), vol. 1, p. 162; Gruntzel, J., *Wirtschaftliche Begriffe* (Vienna, 1919), p. 9; Philippovich, E. v., *Allgemeine Volkswirtschaftslehre* (Tübingen, 1919), p. 339.

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> labor power, abstractly speaking, is perhaps a "permanent source".[80]

In concluding Schanz amplifies his definition of income. In his final revision he says:

> Income is the net inflow of economic ability over a given period of time, inclusive of use benefits [*Nutzungen*] and the valuable but not-compensated-for services rendered by a third party[81] . . . income includes all profits, all benefits, all valuable services, gifts, inheritances, legacies, lottery winnings, insurance annuities, speculative gains of all types minus interest charges and capital depreciation allowances.

Schanz's contribution differs from that of his predecessors in several respects. In the first place, he clearly states that his concept of income is to serve as a supplementary gauge of "ability"; [82] next, he discards all tests previously proposed, except the preservation-of-source criterion.[83] This is, of course, implied in the net accretion criterion and hence, whatever other merits the Schanz concept may have, it raises questions similar to those previously encountered,[84] in connection with this test.

[80] Schanz seems unable to disregard some of the notions conventionally associated with the phrase "periodicity" criterion. His last sentence indicates that the term "permanence" still implies that a given individual is in permanent possession of a given permanent income source or that a specific capital good is permanent. However, there is no necessity for insisting upon a permanent nexus between a given individual and a given income source. If such nexus is not insisted upon—the phrase "category interpretation of the periodicity criterion" avoids this difficulty—Schanz's objection seems ill-taken.

[81] The expression "third party" which occurs frequently in the German literature of the period refers to any agency other than the State.

[82] The Prussian income tax statute of 1891 was patterned after the Schanz concept. At the time of its enactment, Schanz had not yet published his monograph. However he had been prominent as an expert and adviser to governmental agencies. *Cf.* Meisel, F., *Britische und deutsche Einkommensteuer, passim.* Also, Moll, B., *Lehrbuch der Finanzwissenschaft, passim.*

[83] In addition to the authors mentioned who operate with the "preservation-of-source" criterion, the following writers lay considerable emphasis upon this test: Jakob, L. H. v., *Grundsätze der Nationalökonomie oder Theorie des Nationalreichtums* (Halle, 1825), p. 682; Meyer, R., *Das Wesen des Einkommens* (Berlin, 1887), p. 21; Pesch, H., *Allgemeine Volkwirtschaftslehre* (Freiburg, 1909), p. 298.

[84] For some of the difficulties which proponents of the "preservation-of-source" criterion encounter, *cf. supra*, p. 91.

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Gärtner was the only German writer who seriously challenged the Schanz concept. By way of introductory remark, Gärtner [85] points out that a concept of income to be adequate must, (1) not permit the taxation of capital gains under the income tax statute, and (2) "serve the tax administrators as an unfailing guide".

With this twofold purpose in view, Gärtner argues that

> income presupposes antecedent expenditure of labor power. We may define labor power as the energy which the individual expends in order to obtain an income. No "inflow", no accrual item may be considered income unless it can be related to antecedent application of labor power. For a net receipt to be income the recipient must have legal or equitable title to it . . . and the expenditure of labor power . . . constitutes the only "natural" and legitimate claim to income. Whatever legally accrues to an individual without antecedent application of labor power belongs in the capital gain category.[86]

On the basis of the above observations it seems that Gärtner professes a preference for the productivity criterion. Presently, however, he broadens the range of this criterion in an unprecedented manner, when he asserts: "Labor power expenditure must be presumed to have preceded the accrual of a given gain, even if the gain in question is but the result of a strategic decision."

Elucidating the application of his variant of the productivity criterion, Gärtner observes: "Declines in the value of government bonds may represent capital losses (in spite of the fact that their purchase involves the expenditure of labor power on the part of the capitalist) and they must be treated as such if the losses in question are not brought about by an independent economic act." Likewise, capital appreciations are not to be considered income, if they do not arise in consequence of an independent economic act.

This illustration, in the absence of a definition of the phrase "independent economic act", would not seem likely to furnish

[85] Gärtner, *loc. cit.*, pp. 515 *et seq.*

[86] Assignment of capital gain status to a given accrual does not imply tax exemption. *Cf. supra*, p. 88. Also, *cf. infra*, pp. 108 *et seq.*

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the "tax administrator with an unfailing guide", and Gärtner hastens to supply the missing definition: "In the above case the economic activity which involved the expenditure of labor power terminated with the purchase of the security, if the purchaser did not intend to sell the security with a view of realizing a profit." Continuing his discussion of the phrase "economic activity", Gärtner observes that a gift is not income because the recipient has neither "a legal nor an equitable claim"; and he further remarks that "anything that comes to an individual (e. g., treasure trove) without antecedent efforts on the part of the individual does not partake of the nature of income. It must be considered a windfall gain. However, if a professional prospector strikes it rich, his find is income because it is the result of his consciously directed economic activities."

Turning from treasure trove to prosaic annuities, Gärtner finds that

> the right to receive certain amounts annually [annuities] is acquired by a lump sum cash payment. . . . The annual receipt of an annuity involves economic activity on the part of the recipient, because the annuity payments are only made when claimed and hence they must be considered income. . . . Annuities are not to be treated as investment income but must be considered income which is derived in consequence of antecedent application of labor on the part of the recipient.

Schanz responded to Gärtner's concept by charging its author with inconsistency and impracticability.[87] After a brief restatement of Gärtner's treatment of annuities, Schanz remarks:

> It is peculiar that the author who goes to such lengths to demonstrate the expenditure of labor power in connection with the claiming of annuities . . . disregards all labor power expenditure when it comes to inheritances. For the author, receipt of an inheritance represents a capital accretion. He admits that the "acceptance" of an inheritance constitutes "economic activity." Nevertheless, he argues that the "activity" required is of no import whatever, because it does not precede accretion,

[87] Schanz, G. v., "Gärtner's Einkommensbegriff", *Finanz-Archiv*, 1898, pp. 530 *et seq.*

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but becomes operative only after accession is a *fait accompli*. It would seem that acceptance of the inheritance determines whether or not accession becomes actually effective. Typically the recipient of an inheritance carefully investigates whether or not acceptance would impose upon him liabilities in excess of the assets receivable upon exercise of his option.

In substantiation of his charge of inconsistency Schanz contends:

> According to the author, waiters receive tips "because of customs, hence waiters have an equitable claim to tips, hence tips are income". In another passage the author nevertheless maintains that allowances granted by parents to their children for purposes of study are not income because the children have neither equitable nor legal claim to such allowances. It seems to me the claim of children is frequently more equitable than that of waiters. Again, the author insists: "The alms of beggars do not belong in the income category because income is inseparable from antecedent economic activity and it is only by means of economic activity that legal or equitable title to income may be created." Here again the author might be told by the pious and humane that the starving beggar, while without a legal right, nevertheless has an equitable claim. If the beggar's alms are not income, what are they? Capital accretions perhaps?
>
> In addition even Gärtner will have to admit that some bequests represent payment for services previously rendered.

Schanz further feels called upon to reject Gärtner's concept because its usefulness is predicated upon the possibility of gaining reliable knowledge regarding the intent of the taxpayer. Schanz points out that

> the author admits that intent is frequently his means of establishing the presence or absence of economic activity . . . in my opinion it is virtually frivolous to subject the taxpayer to such temptation as is inevitable if his "intent" becomes the significant determinant of his tax liability. Anyhow the majority of people cannot say what they actually "intended" when they purchased a security. They seldom remember whether or not they bought for resale purposes. What shall be done if the taxpayer affirms under oath that he does not remember what his

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intention has been? Shall we, in addition to the categories, income and capital, develop some such new conception as income-or-capital? Men change their minds. I may purchase a security because I anticipate an active market. But, contrary to my expectations, the market may not move and I may deem it more prudent to hold the security in my portfolio. Again, I may purchase a security because I consider it a good investment. A few hours after I may receive reliable information from a friend and resell my stock with a slight profit. Under these conditions which "intent", the first or the second, shall guide the tax administrator?

I admit the subtlety in some of Gärtner's argument but I am still of the opinion that my concept[88] is preferable . . . from the point of view both of equity and administrative practicability.

The Schanz-Gärtner controversy represents the last attempt of German students of economics to arrive at a formal general definition of income for fiscal purposes.

In retrospect, a few summary generalizations concerning the German literature dealing with the concept of income seem justified. In the first place, contributions of the various writers are normative rather than analytical. Second, some of the earlier definitions reflect etymological habits of thought. Third, all German writers, save one, though they differ concerning the criteria which they choose, subscribe to concepts of the accrual type. Fourth, minor exceptions aside, successive writers offer increasingly more inclusive concepts. Fifth, the early emphasis upon net product recedes into the background with the progressive industrialization of Germany. Last, but not least, the very objective of the net income tax base, and consequently the function of concepts of income as fiscal norms, was not clearly recognized until 1892 when Schanz applied a concise formulation together with the most inclusive concept of income ever presented.*

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[88] *Cf. supra*, pp. 102 *et seq.*

* The American contribution to the concept of income will be discussed in a later number of this review.—ED.

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THE ACQUISITION OF LEGAL TITLE TO TERRA NULLIUS

THE diplomatic correspondence of Spain, England, France and the Netherlands,[1] particularly during the seventeenth century, contains evidence that the foreign offices of these nations, from the latter part of the fifteenth to the end of the seventeenth century, considered discovery [2] with symbolic taking of possession an adequate basis for legal title to terra nullius in North America.[3] With the opening of the Nootka Sound controversy between Spain and England in 1790, however, the element of occupation as a basis for the enjoyment of commercial privileges introduced confusion into diplomatic correspondence. In the contest over the northwestern territory, in which the United States, England and Russia were involved during the first quarter of the nineteenth century, discovery with symbolic taking of possession was considered insufficient to vest legal title in any of the claimants. In this later period, occupation was regarded as an essential concomitant in the acquisition of terra nullius.

[1] In preparing this paper the author has been aided by his researches in international law under the direction of Professors J. P. Chamberlain, C. C. Hyde and P. C. Jessup of Columbia University.

[2] Confusion is sometimes caused by the varying meanings of the term "discovery" in diplomatic communications, and it is desirable, therefore, to state that the usual meaning of the term is used in this paper. If there is no indication to the contrary, the word "discovery" always includes a landing, and such landing is accompanied by symbolic taking of possession. The actor is authorized by a government to make the discovery in behalf of the government.

[3] Readers are referred to *Creation of Rights of Sovereignty Through Symbolic Acts, 1400-1800*, by Arthur S. Keller, Oliver J. Lissitzyn and Frederick J. Mann (to be published March 1938 by the Columbia University Press), which deals with material preliminary to the contents of this article. Such documents as are discussed in that study have been omitted from the present paper to avoid repetition.

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From 1497 to 1700

Discovery with symbolic taking of possession was clearly sufficient to constitute title to terra nullius before 1700.[4] The diplomatic representative of the Duke of Milan at London recorded his reactions in a memorandum to the latter on December 18, 1497:

> His Majesty here [Henry VII] has acquired a portion of Asia without a stroke of his sword, . . . Caboto . . . fell in with terra firma, where he set up the royal standard, and having taken possession for his King and collected several tokens, he came back again.[5]

Spain. Spain sought to prevent the plans of the English to colonize Virginia, claiming the latter as its own discovery and part of the territory of the Crown of Castile.[6] In 1607 the Spanish ambassador to England protested to King James of England,[7] and similar representations were made more strenuously by the Spanish secretary of state to the English ambassador to Spain in 1613.[8] That the Spanish foreign office maintained the same position in later disputes with England is evident in a report (1672) from Sir William Godolphin, English ambassador to Spain, to Lord Arlington, secretary of state:

[4] There were only two exceptions in the diplomatic correspondence of this early period. The first was the often-quoted message of Queen Elizabeth to the Spanish ambassador to England in 1580 (see *infra*, note 10). The second was the shift in the position of the Netherlands in the later phase of the controversy with England regarding New Netherland (see *infra*, note 52).

[5] Second dispatch of Raimondo di Soncino to the Duke of Milan. H. P. Biggar (ed.), *The Precursors of Jacques Cartier, 1497-1534* (Ottawa, 1911), Doc. X, p. 19.

[6] Copy of an original letter of M. Juan de Ciriza, Spanish secretary, to M. Andres de Pedrastra, May 7, 1607. Alexander Brown (ed.), *The Genesis of the United States* (New York, 1897), I, 100.

[7] Report of an audience, copy of a deciphered letter from Don Pedro de Zuniga, Spanish ambassador to England, to the King of Spain, Oct. 8, 1607, *ibid.*, I, 120. See also copy of a first draft of a letter from the King of Spain to Don Pedro de Zuniga, June 12, 1607, *ibid.*, I, 102.

[8] Sir John Digbye, English ambassador to Spain, to Sir Dudley Carleton, English ambassador to Venice, Nov. 3, 1613, *ibid.*, II, 668. Another version of this communication is given in the *Calendar of State Papers*, Colonial Series, 1574-1660, p. 16.

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> And this is the sense of all Spaniards, since to inhabit and possess are distinct, neither is the former essential to the latter.[9]

England. As is well known, Queen Elizabeth in 1580 informed Don Bernardine de Mendoza, Spanish ambassador to England, that she could not persuade herself that Spain had any just title to the Indies by any claim or because the Spaniards "had touched here and there upon the coasts, built cottages, and given names to a river or a cape." She considered herself entitled to transport colonies into those parts which the Spaniards did not inhabit.[10] In 1584 Richard Hakluyt[11] wrote his "Discourse of Western Planting"[12] to prove the Queen's title to America.[13] He presented the treatise to her and was duly rewarded.[14] Hakluyt urged:

> . . . a very greate and large parte as well of the continent as of the Ilandes was firste discovered for the Kinge of England by Sebastian Gabote[15] an Englishe man . . . so that the Englishmen have more righte thereunto then the Spaniardes, yf to have rights unto a contrie it sufficeth to have firste seene and discovered the same; Howbeit Gabota did more than see the contrie, for he wente on lande on divers places, tooke possession of the same accordinge to his patents, wch was granted to his father John Gabot, to Lewes, himselfe, and Sancius his brethren, . . . Gabota discovered this longe tracte of the firme lande twoo yeres before Columbus ever saw any parte of the continente thereof.[16]

[9] *Calendar of State Papers*, Colonial Series, America and West Indies, 1669-1674, p. 357.

[10] William Camden, *The History of the Most Renowned and Victorious Princess Elizabeth, Late Queen of England* (3rd ed. rev. London, 1675), p. 255.

[11] Richard Hakluyt, the younger, was in the service of the English embassy at Paris most of the time from 1583 to 1588. E. G. R. Taylor (ed.), *The Original Writings and Correspondence of the Two Richard Hakluyts* (London, 1935), I, 31, 46, 57, 205.

[12] *Ibid.*, II, 211.

[13] *Ibid.*, I, 36.

[14] *Ibid.*, I, 33.

[15] *Ibid.*, II, 293.

[16] The English diplomatic correspondence at times confused the names of Sebastian Cabot with that of John Cabot. However, it is not within the ambit of this paper to evaluate each reference to a Cabot to determine whether Sebastian or John Cabot was intended. The present inquiry is necessarily limited to a determination of the position of the foreign office toward the acquisition of legal title to terra nullius by means of the discoveries urged.

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Hakluyt, who was employed in the English embassy in Paris to further English exploring expeditions,[17] wrote in 1586 to Raleigh:

> If you proceed, which I long much to know, in your enterprize of Virginia, your best planting will be about the Bay of the Thestepians [Chestepians or Cheasapeake], to which latitude Peter Martyr and Franciscus Lopez de Gomara, the Spaniard, confers that one Gabot and the English did first discover; which the Spaniards hereafter cannot deny us, whensoever we shall be at peace with them.[18]

King James of England in his interview with the Spanish ambassador in 1607 denied that the English colonists contemplated going to the Indies, but insisted that they were headed for new regions discovered by Englishmen.[19] The English ambassador to Spain also represented to the Spanish secretary of state in 1613 that Virginia was not part of the discoveries of the Crown of Castile.[20]

In answer to the protest of the French in 1624 against the English plantation in New England,[21] the English foreign office rested title to the disputed region on "the discoveries of Sebastian Cabot, the letters patent to Sir Humphrey Gilbert and Sir Walter Raleigh, and King James' charter for the establishment of the two colonies in those parts".[22] In 1667 the English again held that their legal title to Canada and land

[17] See *supra*, note 11.

[18] Brown, *op. cit.*, I, 18. *Cf. Calendar of Clarendon State Papers* (Oxford, 1872), I, 500.

[19] Report of audience, copy of a deciphered letter from Don Pedro de Zuniga, Spanish ambassador to England, to the King of Spain, Oct. 8, 1607. Brown, *op. cit.*, I, 120. See also letter from same to same, Oct. 16, 1607, *ibid.*, I, 123.

[20] Sir John Digbye, English ambassador to Spain, to Sir Dudley Carleton, English ambassador to Venice, Nov. 3, 1613, *ibid.*, II, 668.

[21] Memorial of Count de Tillieres, French ambassador to England, to Sir Edward Conway, English secretary of state, April 1624, *Calendar of State Papers*, Colonial Series, 1574-1660, p. 60.

[22] *Ibid.*, p. 61.

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adjacent was derived from the discoveries of Sebastian Cabot and other Englishmen: [23]

> The King's title to Acadia, Canada, and countries adjacent is derived from the time that Sebastian Cabot took possession of that continent, and it is confessed in French maps that the gulf and river of Canada were first discovered by the English.[24]
>
> About the time that Columbus discovered Cuba, Sebastian Cabot first discovered Newfoundland, the Gulf of Canada, Cape Breton, and all the coast to Florida, by which his Majesty has his title to Virginia, New England, and New Scotland.[25]

In further diplomatic correspondence with the French during the decade after 1680, the English persisted in maintaining that their title to the region about the Hudson Bay was based on the early discoveries of Englishmen who took symbolic possession for England.[26] English and French commissioners held their first meeting on May 18, 1687 [27] to start their inquiry into the bases of the claims of England and France to this area. The memorial presented in May 1687 by the Hudson Bay Company to the French commissioners was typical of the evidence submitted to prove the legal title of England to the region: [28]

> (1) The northern part of America, where Hudson's Bay lies, was discovered by Sebastian Cabot, holding commissions from

[23] *Calendar of State Papers*, Colonial Series, America and West Indies, 1661-1668, p. 502.

[24] Dated Oct. 4, 1667, *ibid.*, p. 503.

[25] Dated 1667, *ibid.*, p. 504.

[26] Draft of a memorial in answer to M. de la Barre, governor of Canada, April 1683, *Calendar of State Papers*, Colonial Series, America and West Indies, 1681-1685, p. 422. For another draft of the same memorial to the French ambassador, dated December 1683, see *ibid.*, 1685-1688, p. 645. Also *cf.* Hudson Bay Company to the King of England, January 1683, *ibid.*, p. 642.

[27] The petition of the Hudson Bay Company to the King of England, dated May 18, 1687, was placed before the commissioners at their first meeting. *Ibid.*, p. 368.

[28] *Ibid.*, p. 369. See also the reply of the English commissioners to the memorial of the French commissioners, July 1687, *ibid.*, p. 404; and the answer of the Hudson Bay Company to the second memorial of the French company, August 1687, *ibid.*, p. 412.

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King Henry VII in 1497. (2) In 1610 Henry Hudson, an English subject, sailed into the straits and bay and took possession.[29] (3) In 1612 Sir Thomas Button, an Englishman, sailed into the straits and bay and took possession of Port Nelson and the territory adjoining. (4) In 1631 Captain Luke Fox, by command of King Charles I made a voyage to Hudson's Bay, entered the river to Port Nelson and found a cross set up by Sir Thomas Button. He then set up a new cross declaring the King's right and possession. (5) In 1667 one Zachary Gilliam, an Englishman, sailed to a river in the bottom of the bay and called it Rupert river in honor of Prince Rupert. He built a fort there called Charles Fort. (6) In 1669 Captain Newland entered Port Nelson and declared the King's right thereto.

In response to the request of the English foreign office in January 1699,[30] the Council of Trade and Plantations argued that the discovery of the northern continent of America by the subjects of England justified the later grants of letters patent to settlers of the Hudson Bay region, then still in dispute between England and France.[31] In March 1699, the Hudson Bay Company repeated the substance of its earlier communications to the commissioners, urging that the legal title of England rested on the early discoveries and symbolic taking of possession by Englishmen.[32] In June 1699, the company replied in a similar vein to a memorandum submitted by the French.[33]

In accordance with instructions from the Privy Council,[34] Sir Dudley Carleton, English ambassador to the Netherlands,

[29] *Cf.* the reply of the French commissioners, June 1687, that Hudson did not take symbolic possession, *ibid.*, p. 388. In the reply of the English commissioners to the French in July 1687, the English in turn insisted that the title of King Francis I of France was of no validity as the French discoverers had failed to take symbolic possession of the new land. *Ibid.*, p. 404.

[30] James Vernon, secretary of state, to the Council of Trade and Plantations, Jan. 3 and 9, 1699, *Calendar of State Papers*, Colonial Series, America and West Indies, 1699, pp. 4 and 9, resp.

[31] Feb. 17, 1699, *ibid.*, p. 64.

[32] March 4, 1699, signed by Samuel Clark, deputy governor, *ibid.*, p. 89.

[33] Hudson Bay Company note of June 5, 1699 in reply to the French communication of May 10, 1699, *ibid.*, p. 271.

[34] Dated Dec. 15, 1621, *Calendar of State Papers*, Colonial Series, 1574-1660, p. 26.

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protested in February 1622 to the States General against the attempted settlement by the Dutch in so-called New Netherland.[35] The English considered the Hollanders as interlopers.[36] Although the English did not have settlements in the particular region claimed by the Dutch, they insisted that their discoveries, prior to those of the Dutch, were adequate to invest them with title to the entire coast.[37]

An interesting memorandum of the English foreign office in 1663, which may indicate the attitude of the English at the time, argued that [38]

> that which gives a nation right to countries undiscovered is a primary discovery, and that those places we pretend to, in behalf of the King, were by his predecessors at a vast expense of treasure and of life, discovered and long after hidden from those who now presume to possess them . . . the discoveries of Sebastian Cabot. . . .[39]

[35] Dated Feb. 9, 1622. John R. Brodhead (comp.), *Documents Relative to the Colonial History of the State of New York* (Albany, 1856), III, 8.

[36] Capt. John Mason to Sir John Coke, secretary of state and commissioner for Canada and Virginia, April 2, 1632, *Calendar of State Papers*, Colonial Series, 1574-1660, p. 143.

[37] *Ibid.*; see also Sir Ferdinando Gorges to Capt. John Mason, March 18, 1632, in which reliance was placed upon the representations made by the English ambassador to the Netherlands and the response of the latter, *ibid.*, p. 141. For similar communications in this early period of the English-Dutch dispute, see *ibid.*, pp. 26, 154. See also *A Collection of the State Papers of John Thurloe* (London, 1742), V, 81, where Mr. Thurloe argued in 1656 that the Dutch had no right in the disputed region: "as Columbus discovered the western or southern parts, so Cabot (at the charge of the said king) discovered these northern parts. And ever since which the national right of the English nation (to these parts) hath been lawfully maintained from age to age successively almost for the space of two hundred years. . . ." Mr. Thurloe in 1651 was appointed secretary to the embassy to Holland; 1652, secretary to the council of state; 1653, secretary of state under Cromwell, the Lord Protector; 1655, head of the postal department; 1656, parliament member; 1657, privy councillor; and after the Protector's death, secretary of state under Richard Cromwell until January 1660.

[38] *Calendar of State Papers*, Colonial Series, America and West Indies, 1661-1668, p. 177.

[39] But this statement goes on to urge the discovery by Henry Hudson of the Hudson River area in behalf of England, which is of course contrary to the accepted explanation that the discovery by Hudson was under the authorization

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In answer to the insistence of the Dutch in the later phase of the controversy over New Netherland, that possession is the sole factor of importance in determining title, the English replied in 1665:

> And as to the point of possession, there is nothing more cleare and certaine than that the English did take possession and inhabit the lands within the limits of the said patents, long before any Dutch were there. 'Tis not to say, (nor is it requisite that it should be said) that they did inhabite every individual spot, within the limits of them. It is enough that their patent is the first, and that in pursuance thereof, they had taken possession, and did inhabite and dwell within the same, and made considerable towns, forts, and plantations therein before the Dutch came to dwell there. . . .[40]

Of course this communication of the English is in sharp contrast to the position taken by Queen Elizabeth in 1580.[41]

In the report of the Council of Trade and Plantations in 1699 on the Scotch settlements upon the Isthmus of Darien, 1698-1699,[42] the English acknowledged that Spain had a prior claim to the Darien area, because of earlier discoveries by Spaniards, even though the particular region selected by the Scotch for their settlements was not occupied at that time by the Spaniards.[43]

France. In her disputes with England over Canada and adjacent territory, France consistently maintained that dis-

of the Dutch government, as is stated in a communication from the West India Company to the States General, Nov. 5, 1660. Brodhead, *op. cit.*, II, 133.

[40] Sir George Downing, English ambassador to the Netherlands, to the States General, April 7, 1665, *ibid.*, II, 331, 332.

[41] See *supra*, note 10.

[42] *Calendar of State Papers*, Colonial Series, America and West Indies, 1699, p. 250.

[43] See also memorandum of papers relating to the Scotch settlement, delivered to the Council of Trade and Plantations by James Vernon, secretary of state, May 22, 1699, *ibid.*, p. 240; and a later report by the Council to the House of Lords, Jan. 18, 1700, *ibid.*, 1700, p. 32.

For an account of the taking of possession of Crab Island by the Scotch settlers on their way to Darien, Oct. 2, 1698, and their conflict with the Danes from St. Thomas Island who also sought to take possession, see *ibid.*, 1699, p. 464. For a later incident regarding Crab Island, see *ibid.*, p. 502.

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covery with symbolic taking of possession was sufficient to constitute legal title to terra nullius. She claimed the New England area in 1630 as a region first discovered by Frenchmen.[44] In the Hudson Bay controversy, the French commissioners in two memorials in 1687[45] and the French ambassador to England in a communication in 1699[46] insisted that the French discovered the Hudson Bay region and took symbolic possession there before the English did so. Typical of the evidence used by the French commissioners was the following section of the memorial submitted by them in July 1687:

> In 1656 we sent a ship commanded by Jean Bourdon along the northern coast of Canada, who took authentic possession of Hudson's Bay, but made no settlement, since establishments on the coast were for the present more convenient, waiting only for a time to push closer and closer to it. . . . In 1663 Sieur Couture, a missionary, was sent . . . with four or five more, who erected a cross and the King's arms in token of renewal of possession. . . . In 1672 Father Albanel and Sieur de St. Simon took possession anew of the country between the St. Lawrence and Davis' and Hudson's Straits. They planted a cross at the Riviere des Francois.[47]

Netherlands. On the basis of the discovery of New Netherland by the United Company of Merchants of the Netherlands, the States General of the Netherlands on October 11, 1614 accorded the privileges of sole occupation to the company deputies.[48] In answer to a remonstrance from England, the States General in April 1632 justified the rights of Dutch subjects in the disputed region by

[44] Narrative addressed to Sir John Coke, English secretary of state and commissioner for Canada and for Virginia, *Calendar of State Papers*, Colonial Series, 1574-1660, p. 111.

[45] June 1687 and July 1687, *Calendar of State Papers*, Colonial Series, America and West Indies, 1685-1688, pp. 388 and 405, resp.

[46] On May 10, 1699, the French ambassador answered the memorial of the English commissioners of March 17, 1699. *Ibid.*, 1699, p. 205.

[47] *Ibid.*, 1685-1688, p. 405.

[48] Brodhead, *op. cit.*, I, 10. See also resolution of Sept. 28, 1621 which permitted a ship to be sent to New Netherland. *Ibid.*, I, 27.

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> first discovery, occupation, and the possession which they have taken thereof, and by the concessions and letters patents they have had from our sovereigns, who were, for the above reasons, the true and legitimate proprietors thereof in those parts.[49]

As indicated in the resolution of October 11, 1614, the concessions and letters patent were granted by the States General on the sole basis of discovery with symbolic taking of possession.[50] In a memorandum submitted by the Dutch West India Company to the States General on November 5, 1660, the claim to New Netherland was urged because the region

> was first discovered and found in the year 1609 by the Netherlanders, as the name imports, at their own cost, by means of one Hendrick Hudson, skipper and merchant, in the ship the *Halve Maene* sailing in the service of the Incorporated East India Company; for the natives or Indians, on his first coming there, regarded the ship with mighty wonder . . . declaring that such a ship or people had never before been there.[51]

In their correspondence with the English during 1664 and 1665, the Dutch shifted the basis of their claim to New Netherland and rested it on priority of occupation as the only criterion to determine legal title to terra nullius.[52]

[49] *Ibid.*, I, 57.

[50] *Ibid.*, I, 10.

[51] *Ibid.*, II, 133. *Cf.* to document dated 1663 in *Calendar of State Papers*, Colonial Series, America and West Indies, 1661-1668, p. 177, where a different statement of facts is given by the English.

John R. Brodhead in *History of the State of New York* (rev. ed. New York, 1874), I, 30, quotes the passage that De Laet takes from Hudson's journal of his landing of the *Half Moon* on the shore along the Hudson River on Sept. 18, 1609.

[52] Report of Michael van Gogh, Dutch ambassador to England, Nov. 7, 1664, of his audience with Charles II of England on Nov. 6, 1664. Brodhead, *Documents*, II, 277, and *ibid.*, III, 77; observations made by the States General on the memorial presented by Sir George Downing, English ambassador to the Netherlands, Feb. 9, 1665, *ibid.*, II, 309, 324; and additional observations of the States General to a reply of Sir George Downing, printed in 1666 at The Hague, *ibid.*, II, 379.

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From 1700 to 1826

Nootka Sound Controversy: Spain-Russia-England. Several Russian vessels were upon the point of making commercial establishments upon the northwest coast near Nootka Sound in the seventeen-eighties. Spain, however, immediately pointed out to Russia that a Spanish admiral had visited Nootka Sound in 1774, that the harbor had been frequently visited both before and after that year "with the usual forms of taking possession", and that the forms of taking possession had been repeated more particularly in 1755 and 1779 all along the coast as far as Prince Williams Sound. Because of these acts of possession by Spaniards, Russia ordered its subjects not to make settlements in places which belonged to Spain.[53]

Lieutenant Mears, an Englishman, reached Nootka Sound in May 1788, and after purchasing a spot of land from the local Indian chief, he built a house and hoisted a British flag on it.[54] He soon departed. When other English ships appeared at Nootka Sound the following year, the Spaniards seized them for encroaching upon Spanish territorial rights.[55]

English notes of protest to Spain against the seizures made no claim to English sovereignty over the disputed region, but merely sought to secure the consent of Spain to the right of British subjects

> to the enjoyment of a free and uninterrupted navigation, commerce and fishery, and to the possession of such establishments as they should form, with the consent of the natives of the country, not previously occupied by any of the European nations.[56]

[53] See memorial of the court of Spain, delivered by El Conde de Florida Blanca Aranjuez, Spanish minister of state, to Alleyne Fitzherbert, English ambassador at Madrid, June 13, 1790. Great Britain, *Annual Register* (State Papers) XXXII (1790), 294.

[54] See substance of the memorial presented by Lieutenant Mears to W. Wyndham Grenville, secretary of state, May 13, 1790, *ibid.*, XXXII, 287.

[55] See message from the King of England to both Houses of Parliament, May 25, 1790, *ibid.*, XXXII, 285.

[56] British chargé d'affaires at Madrid to Spanish foreign office, June 4, 1790. Robert Greenhow, *The History of Oregon and California, and the Other Territories of the Northwest Coast of North America* (New York, 1845), p. 204.

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In another note from the English to the Spanish ambassador at London, it was stated that the King of England

> cannot accede to the pretensions of absolute sovereignty, commerce, and navigation, which appeared to be the principal objects of the last note from the Spanish ambassador; and he considers it his duty to protect his subjects in the enjoyment of the right of fishery in the Pacific Ocean.[57]

While the English maintained that they were entitled to commercial privileges along the northwest coast and in the Nootka Sound, the Spanish insisted upon their exclusive commercial privileges in the disputed region because of the sovereignty which they had derived from prior discoveries:

> Although Spain may not have establishments or colonies planted upon the coasts or in the ports in dispute, it does not follow that such coast or port does not belong to her.[58]

The Spanish ambassador to England in his memorial to the English foreign office based the claim of Spain to Nootka Sound upon the visit of the Spanish admiral to the Sound in 1774.[59] In a later memorial to the English ambassador at Madrid, June 13, 1790, the Spanish minister of state pointed out that the harbor had been frequently visited both before and after 1774 by Spaniards with the usual forms of taking possession. The Spanish court reminded the English that it was these acts that gave occasion to the earlier withdrawal of the Russians from their proposed settlement along the northwest coast.[60]

In a tentative settlement of their controversy, England and

[57] Undated; answered later by Spain on June 4, 1790, *ibid.*, p. 204.

[58] Declaration of the King of Spain, June 4, 1790, transmitted to all the European courts (signed by El Conde de Florida Blanca Aranjuez, Spanish minister of state), *Annual Register*, XXXII, 292.

[59] See *supra*, note 53.

[60] *Annual Register*, XXXII, 294. See also letter from Count de Fernan Nunez, Spanish ambassador at Paris, to M. de Montmorin, "secretary of the foreign department of France", June 16, 1790, *ibid.*, XXXII, 301.

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Spain signed the Nootka Sound convention on October 28, 1790: [61]

> . . . their respective subjects shall not be disturbed or molested, either in navigating or carrying on their fisheries in the Pacific Ocean, or in the South Seas, or in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there. . . .[62]
>
> It is agreed, that as well in the places which are to be restored to the British subjects, . . . as in all other parts of the north-western coasts of North America, or of the islands adjacent, situate to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two powers shall have made settlements since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access, and shall carry on their trade without disturbance or molestation.[63]

Northwest Controversy: England-Russia-United States. The opinion given by Lord Stowell in December 1821 with respect to the ukase and regulations issued by the Emperor of Russia on September 4, 1821 [64] greatly influenced the attitude of the English foreign office in the ensuing diplomatic controversy involving England, Russia and the United States as to their respective rights in the northwest territory. Lord Stowell maintained that

> possession does not appear in the opinion and practice of states to be founded exactly upon the same principles in the cases of islands and continents. In that of islands, discovery alone has usually been held sufficient to constitute a title. Not so in the case of continents. In the case of the South American continent the Spaniards and Portuguese resorted to grants from an

[61] *Ibid.*, XXXII, 303. Ratifications were exchanged at Madrid, Nov. 22, 1790.

[62] Article III. [63] Article V.

[64] For the ukase and the rules established for the limits of navigation and order of communication along the coast of Eastern Siberia, the northwestern coast of America, and the Aleutian, Kurile and other islands, see *American State Papers*, IV, 856.

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> authority which in that age was universally respected, and continued in respect till subsequent possession had confirmed their title. But I think that it has not been generally held, and cannot be maintained that the mere discovery of a coast gives a right to the exclusive possession of a whole extensive continent to which it belongs. . . . An undisputed exercise of sovereignty over a large tract of such a continent and for a long tract of time would be requisite for such purposes.[65]

Accordingly, England in her diplomatic correspondence [66] and conversations [67] with Russia in 1822 and 1823 set up the criterion of occupancy as a test of sovereignty in the northwest area. Russia yielded to the English contention "that use and occupation constitute the best titles by which a state can lay claim to rights of sovereignty over any part of the continent." [68] In an earlier note to the United States, however, Russia had rested her right to the extent of the northwest coast upon three bases: discovery, occupation and uncontested possession for more than half a century.[69]

The United States protested against the Russian ukase and regulations of 1821,[70] and disputed the territorial contentions

[65] Lord Stowell to Lord Melville, Dec. 26, 1821, *Alaskan Boundary Tribunal*, Case of the United States before the tribunal convened at London under the provisions of the treaty between the United States and Great Britain concluded Jan. 24, 1903 (Washington, 1903), p. 102.

[66] Confidential memorandum from the Duke of Wellington, English ambassador to Russia, to Count Nesselrode, Russian secretary of state, Oct. 17, 1822, *ibid.*, p. 113. For instructions from George Canning to the Duke of Wellington, Sept. 27, 1822, see *ibid.*, p. 110. See also Sir Charles Bagot, English ambassador to Russia, to Mr. Canning, Oct. 17, 1823, *ibid.*, p. 129.

[67] Report of conversations of Sir Charles Bagot with Chevalier Pierre de Poletica, "department of foreign affairs of Russia", in communication from latter to Count Nesselrode, Nov. 3, 1823, *ibid.*, p. 137.

[68] Memorandum from Count Nesselrode to Duke of Wellington, Nov. 11, 1822, *ibid.*, p. 115.

[69] Chevalier de Poletica, Russian minister to the United States, to John Quincy Adams, American secretary of state, Feb. 28, 1822, *American State Papers*, IV, 861, 862. *Cf.* same to same, March 21, 1822, *ibid.*, IV, 863.

[70] Mr. Adams to Chevalier de Poletica, Feb. 25, 1822, *ibid.*, IV, 861. For the communication of the ukase and regulations to the United States, see from the latter to the former, Jan. 30, 1822, *ibid.*, IV, 861.

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of Russia.[71] John Quincy Adams, American secretary of state, maintained that the right of the United States to the coast from the forty-second to the forty-ninth parallel of latitude was unquestionable, being founded,

> first, on the acquisition by the treaty of February 22, 1819 of all the rights of Spain; second, by the discovery of the Columbia River, first from the sea, at its mouth, and then by land by Lewis and Clarke; and third, by the settlement at its mouth in 1811.[72]

In diplomatic correspondence in 1823 and 1824 with Count Nesselrode, Russian secretary of state, Henry Middleton, American minister to Russia, argued that occupation was necessary to constitute title over terra nullius in the northwest area,[73] but he admitted at the same time that Russia derived her rights "to that long chain of islands intervening between the western and the eastern continents, and even to a very considerable portion of the continent of America" from discoveries by Russians. He acknowledged also that these rights of Russia "have never been contested." Mr. Middleton observed that these discoveries had been made by Russians in 1710 and 1741.[74]

In correspondence with England, the United States rested its title to the Columbia River and the territory washed by its waters

[71] In observations on the claims of Russia to territorial possessions on the continent of North America, communicated to Henry Middleton, American minister to Russia, July 22, 1823, John Quincy Adams quoted at length from the diplomatic correspondence between England and Spain as to Nootka Sound in 1790, *American State Papers*, V, 443.

[72] Mr. Adams to Mr. Middleton, July 22, 1823, *ibid.*, V, 436.

[73] Confidential memorial from Mr. Middleton to Count Nesselrode, Dec. 17, 1823, *ibid.*, V, 449. See also *Alaskan Boundary Tribunal*, p. 67.

Mr. Middleton to Count Nesselrode, Feb. 9, 1824, *American State Papers*, I, 457, 463.

Mr. Middleton to Count Nesselrode, March 8, 1824, *ibid.*, V, 457, 465.

For an English interpretation of the position of Mr. Middleton, see Sir Charles Bagot to Mr. Canning, Oct. 17, 1823, *Alaskan Boundary Tribunal*, p. 129.

[74] Confidential memorial from Mr. Middleton to Count Nesselrode, Dec. 17, 1823, *American State Papers*, V, 449. See also *Alaskan Boundary Tribunal*, p. 67.

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> upon the discovery from the sea and nomination by a citizen of the United States; upon its exploration to the sea by Captains Lewis and Clarke: upon the settlement of Astoria, made under the protection of the United States, and thus restored to them in 1818; and upon this subsequent acquisition of all the rights of Spain. . . .[75]

Richard Rush, American minister to England, in his discussions with the English plenipotentiaries in London in 1823 and 1824, insisted that the significance of the first discovery of the Columbia River by Captain Gray, an American citizen, in 1792[76] did not depend upon whether his ship had been fitted out by the government of the United States, or whether the expedition had been organized under national authority. Mr. Rush maintained that it was sufficient that the *Washington* commanded by Captain Gray "bore at her stern the flag of the nation, sailed forth under the protection of the nation, and was to be identified with the rights of the nation.[77]

In contrast to the claim by the United States to full and exclusive sovereignty from the forty-second to the forty-ninth degree of north latitude along the northwest coast, Great Britain

> claims no exclusive sovereignty over any portion of that territory. Her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy in common with other states, leaving the right of exclusive dominion in abeyance.[78]

The above exposition of the attitude of Great Britain, in December 1826, obviously following the provisions of the Nootka Sound convention of 1790,[79] restated the English position as

[75] Mr. Adams to Richard Rush, American minister to England, July 22, 1823, *American State Papers*, V, 791.

[76] British statement submitted by W. Huskisson and H. U. Addington, the British commissioners, to Albert Gallatin, American minister to England, at their sixth conference held at London, Dec. 16, 1826, *ibid.*, VI, 662.

[77] Mr. Rush to Mr. Adams, Aug. 12, 1824, in his report on discussions with the British plenipotentiaries in London, *ibid.*, V, 533, 554.

[78] See *supra*, note 76.

[79] See *supra*, p. 123. See also Mr. Gallatin to Henry Clay, American secretary of state, Aug. 10, 1827, *American State Papers*, VI, 694.

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represented earlier in 1826 to Albert Gallatin, the American minister in London, by the British plenipotentiaries who were conferring with the American representative. Mr. Gallatin protested that the English stress on the importance of occupancy instead of discovery rested on the Nootka convention which was concerned with commercial privileges and not with the settlement of territorial claims.[80]

Closing Observations

Of significance in the study of the diplomatic correspondence of the foreign states here considered is the sharp distinction between the position taken in the period prior to 1700 and the attitude assumed in the latter part of the eighteenth century and continued thereafter. In the earlier period the states generally recognized that discovery with symbolic taking of possession was adequate to constitute legal title to terra nullius in North America. In the latter part of the eighteenth century, however, England sought to share in the commercial privileges along the northwest coast and accordingly negotiated and completed the Nootka Sound convention with Spain in 1790, which stipulated that occupation would be the test of the existence of rights to commercial privileges in the disputed area. In the first quarter of the nineteenth century, settlements increased rapidly along the northwest coast and conflicts among English, American and Russian nationals multiplied as they sought to further their respective trading claims. Thereupon, England, Russia and the United States resorted to occupation as a test to determine not only the right to commercial privileges but also the extent of asserted legal title to the territory in dispute. Occupation has remained as a concomitant test of legal title to terra nullius, and was incorporated into articles 34 and 35 of the convention adopted at the conference at Berlin in 1885 regarding African territory.[81]

[80] Mr. Gallatin to Mr. Clay, Nov. 16, 1826, *ibid.*, VI, 650; and same to same, Nov. 25, 1826, *ibid.*, VI, 652. *Cf.* instructions from Mr. Clay to Mr. Gallatin, June 19, 1826, *ibid.*, VI, 644. For the view of Mr. Gallatin as to the extent of territorial claim contemplated, see Mr. Gallatin to the British plenipotentiaries, Dec. 19, 1826, *ibid.*, VI, 666.

[81] *British and Foreign State Papers*, LXXVI, 4.

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In the opinion of the Permanent Court of International Justice in the Eastern Greenland case, decided April 5, 1933, when acts in an early period of history, as from the tenth to the sixteenth centuries, in thinly populated or unsettled territory are considered, a less rigid test would be required to establish legal title to terra nullius than would be necessary were such acts attempted in a more recent period and in a heavily settled area.[82] Similarly, although discovery with symbolic taking of possession has not been sufficient to establish legal title to terra nullius since the beginning of the nineteenth century, it is clear from an examination of the diplomatic correspondence of the states here considered that such discovery with symbolic taking of possession constituted legal title to terra nullius in North America prior to 1700.

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[82] Publications, Permanent Court of International Justice, Series A/B, No. 53, pp. 45-48. See comments of Professor Charles Cheney Hyde, "The Case Concerning the Legal Status of Eastern Greenland", *American Journal of International Law*, XXVII (1933), 732.

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REVIEWS

The Good Society. By WALTER LIPPMANN. Boston, Little, Brown and Company, 1937.—xxx, 402 pp. $3.00.

The career of the author is well known, as a student of Graham Wallas, Secretary to the Socialist mayor of Schenectady, associate editor of the *New Republic,* editorial writer, journalist and columnist. I have followed the scholarly work of Mr. Lippmann with keen interest, since I first read his *Preface to Politics* in 1913 and went on to his *Public Opinion,* the *Phantom Public* and others of his minor works and essays. I approached *The Good Society* with quickened recollections of Wallas' *Great Society*, but concluded in sharp disappointment. *The Good Society* does not seem to me to fulfill the promise of the *Preface to Politics.* The richness of style was there; the facile cleverness was there, but the windows of the *Great Society* were darkened.

This volume is an elaborate effort to propound a new theory and practice of "liberalism";—in part a critique of such social action as the author chooses to characterize as "collectivism", and in part an attempt to state a theory of "liberalism" and a program of "liberalism". The earlier pages of the study are devoted to an assault upon all forms of "collectivism", under which he chooses to include not only totalitarianism, socialism, communism, but also "nationalism", "gradualism" and "progressivism".

In his *Method of Freedom* (1935) Mr. Lippmann distinguished between "directed economy" on the one hand, and on the other "compensated economy" or "free collectivism", which he then and there defended. At that time he pointed to the advantages of a middle way such as that followed by England and the United States. In this later discussion, however, he groups together all forms of "collectivism" or "planning" indiscriminately. "Gradual collectivism", "democratic collectivism", apparently all forms of organized "planning" are assailed with equal vehemence, as essentially betrayals of liberalism. Planning is sinning, small scale or large.

The theoretical basis of this position is essentially the doctrine of laissez faire, but reënforced now by Pareto, von Mises and von Hayeck. From Pareto, whom he characterizes as an "inveterate

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liberal" (*sic*), Lippmann learns of the impossibility of understanding the laws of society except as the result of "a revolutionary advance in the logical powers of men." "In certain of the more recondite branches of mathematical economics", says the author, "we may perhaps have premonitory intimations of the modes of thought that may some day be developed to a point where the social order can be successfully analyzed" (p. 34). Thus Pareto is substituted for Mill's logic of the social sciences and Spencer's biological law of "conduct and consequence" as a deterrent to conscious social change. From von Hayeck and von Mises he finds that forecasting and pricing under any other than a "free market" make the collective operation of enterprises difficult if not impossible. The author avoids, however, close discussion of either their economic theories or the elaborate recent criticisms of them. He betrays no familiarity with Henry Simons' *Positive Program for Laissez Faire,* and in general stops his discussion short of intensive consideration of the refinements of a great body of emerging economic theory.

Those who uphold the "collective" forms of social action are "playing god", unrealistic, unaware of the implications of what they are advocating. They do not realize that their goal cannot be reached except in a society that is warlike or poor. They do not realize that they must really plan "for a society in which human beings were born equipped to fly like the angels, to feed on the fragrance of the summer breezes, and endowed with all possible knowledge" (p. 364)—all this in addition to mastering the mathematics of Pareto and overcoming the pricing technique of von Mises. Indeed, these hapless souls seem to quicken Mr. Lippmann's ample faculties of denunciation to such an extent that he fails to deal effectively with the absolutistic doctrines of the totalitarian states. He abhors and abjures these new theories which I have characterized as "inebriated sovereignty", but it does not appear that he cares to analyze them carefully.

This denunciation applies, it would appear, not merely to the "totalitarians" but also to all forms of "gradualists" and "progressives" who have not learned the true way of life. It is indeed the lapses of these hopeful persons, many of whom were, as late as 1934, in the category of "free collectivists", that have caused the debacle of liberalism, and the present despair of the world. For them is reserved only an outer darkness in philosophy.

Charles A. Beard and Stuart Chase and George Soule are given special dishonorable mention as misguided liberals and are to be shot

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at dawn along with Hitler, Mussolini and Stalin. Only the "inveterate liberal", Pareto, survives, despite his denunciations of democracy and his deification of the élite.

Others of the diligent advocates of planning in the United States for some thirty years, city planning, county planning, state planning, regional planning, national planning, apparently must also prepare for death or for exile from the home of the liberals. If it is said that their type of planning is not included in the indictment, I answer, neither is it excepted in an ample volume of four hundred pages.

But before we die, may we not know (under the common law) just what this "collectivism" is? When does collective action, which seems to be the basis of the state, become collectivism, may we be told? How much must we collect before we identify "collectivism"?

The answer to the plight of the world is sought in a reconstruction of liberal philosophy. Mr. Lippmann's scheme involves faith in (1) the open or free market, and (2) *a* common law, as guides of social action. The division of labor and the open market are the supreme elements of our economy; and if left alone will show the way. But Mr. Lippmann insists that this doctrine must not be confused with laissez faire, which is really "a system of social uncontrol." He repudiates as heartily as President Hoover the old classical doctrine.

We must further provide, says the author, "Social control by a common law which defines the reciprocal rights and duties of persons and invites them to enforce the law by proving their case in a court of law." But at the same time, Mr. Lippmann hastens to repudiate the illiberal decisions of certain courts in the United States. Obviously the advantages of the division of labor are not capable of providing material for an extended debate, since all agree. Who denies it?

Whether it is not possible that the free or open market has found difficulties of its own, as asserted by, let us say, Burns in his *Decline of Competition,* or by Laski in his *Liberalism,* Mr. Lippmann does not discuss fully. In general, obstacles to the perfect operation of the free market may be attributed to the nodding liberals who failed to keep the tired competitors competing, even when they preferred some other course. The powerful concentrations of economic power with which liberals often contended were not produced by economic causes, it seems.

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"The" common law as a regulator of social action has required the addition of many statutes in the last century and does not operate automatically in the light of our industrial experience. But if the author refers to "a" common law, have we not had this under the name of general legislation for a considerable period?

The executive and administrative branches of the government, which in the *Method of Freedom* were looked upon with some favor, are now under some grave suspicion. In the *Method of Freedom* transfer of initiative to the executive as a balance against the legislative was regarded as essential in a modern state (p. 85). There is danger, however, that "public officials" may assume the rights of sovereignty, that they may become autocratic in their spirit and effect. But seemingly this does not apply to judges and lawmakers.

The agencies now relied upon to remove the obstructions to progress in our day are "a" common law, with individual actions in court. Governmental administrative agencies, such as the Federal Trade Commission, must withdraw into the background, apparently, and leave the restraint or overthrow of great companies to the pygmies. Individual actions by A or B or C may be initiated against wilful persons, real or artificial, in order to check the acquisitive tendencies of goliath-like enterprises. The judges, who are presumably not "public officials" in the sense that administrators are public officials, will surely render justice in social and industrial affairs. One recalls Anatole France's comment on "the majestic equality of the laws, which forbid rich and poor alike to sleep under the bridges, to beg in the streets, and to steal their bread."

While all forms of democratic "collectivism" and "gradualism" are anathema, the way is still open to social legislation. Provided it is not called "collectivism" and provided Mr. Lippmann is willing to visa the passport, action may be taken. If thus sponsored, education, eugenics, conservation of natural resources, control of the business cycle and monetary management may enter. Movements for elimination of unearned incomes, for equalization of income, may enter if not branded as "collective". We may examine the credentials and powers of the modern corporation, and restrict its activities by all manner of conditions and commitments. This indeed the liberals should have done long since, complains the author. None of these measures savors of "collectivism", but may be taken up without the sin of violating the principles of the free market and without other weapons than "a common law" and the judicial attitude.

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It is puzzling to see where "collectivism" ends and this "agenda of liberalism" begins, for in Mr. Lippmann's study it seems to make little difference whether the "gradualists" really are bent on totalitarianism or whether they are inexorably led on, no matter what they intend or hope. If "gradualists" intend raising the standard of living by the wider distribution of advantage or privilege, they are wicked "collectivists", but if they undertake the control of the business cycle in the prescribed form, they are liberals of the true faith. Or if they wish to bring about a greater degree of equality of income via "a common law" and the judicial attitude, they are sound, but if they "plan" this, they become, in Mr. Lippmann's language, "a band of monkeys" who might by chance write Shakespere on a typewriter if they kept at it through all eternity (p. 125). If they take oath that they are not planning, even with their subconscious, all is well.

For my part, I cannot escape the conclusion that the doctrine of Lippmann is contradicted by his agenda; and further that the agenda is made impotent by his method of action—"a" common law and the judicial attitude, with a boycott on administration. His political theory has been the watchword of antiliberalism for almost a century, paralyzing to effective social action. If his philosophy is sound, his agenda is wrong; if his agenda is right, his methods are futile. His "agenda of liberalism" is hopelessly lost between an unsound theory and an unsound method. I venture to say that the surviving parts of Mr. Lippmann's discussion will be neither his theory nor his methods, but those sections of his "agenda" which he would have classified four years ago as "free collectivism."

I cannot believe, as one who has closely followed Mr. Lippmann's writings for a generation, that this present point is for him the end of the trail, but that he wandered aside in his gallant quest for certainty into a by-way from which he will one day come back. What he has found may glisten, but it is not gold.

Most of all, perhaps, do I deplore in an attempt to state a theory and formulate a practice of neo-liberalism, a trace of illiberalism and intolerance toward those who differ from the new credo. Must we not be liberal to liberals; generous to others who struggle to realize the ideals of democracy; persuasive and conciliatory toward those whose chief weapons are persuasion, conciliation and sweet reasonableness?

Has there been no worth-while liberal since Smith, Mill and Spencer, not even Wallas? Are there no liberal plans short of totalitarian plans? Are there no effective efforts toward social regu-

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lation by law, whether a common law or a general law; no "liberal" voices raised against absolutism, force, despotism? Is there not room in the vocabulary of liberalism for the "agenda of liberalism" and for "planning", too?

Liberalism is not a set of doctrines, but a cast of thought and a mode of action. Liberalism differs as to special aims, particular platforms and operating plans, but not upon the larger goals of human activities, upon devotion to a general framework within which order and justice serve the common good, upon a general attitude in arriving at decisions, and upon a general spirit of administering social policies. "Liberalism", it has been said, "is whatever can be arrived at liberally by the use of whatever intelligence we conjointly command."

I agree with Mr. Lippmann at so many points in the study of the political, and I appreciate so keenly his verbal and allusive subtlety and strategy, that I cannot refrain from thinking sometimes that the genial companion of the breakfast table for so many Americans is really spoofing us in the grand manner.

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Neutrality for the United States. By EDWIN BORCHARD and WILLIAM P. LAGE. New Haven, Yale University Press, 1937.—xi, 380 pp. $3.50.

The extravagant praise and the sharp criticism that have greeted this volume at the hands of early reviewers suggest that we have not yet reached the plane upon which neutrality can be discussed with academic detachment. The reason is obvious enough. Neutrality involves questions of policy as well as of fact; and it is to be expected that those who feel strongly upon the issues of policy should be tempted to interpret the issues of fact to support their position upon policy. What the authors have given us in this volume is a lawyer's brief rather than an impartial study; and while it makes a plausible case on the basis of the particular facts selected for treatment, it breaks down all along the line when tested by other facts equally pertinent to the case. The bias of the authors is evident from first page to last and is particularly manifest in their tendency to use opprobrious terms to describe the views of those whose policies they oppose. "The cult of unneutrality", "seductive phrases", "life-preserving role", "mixing in foreign wars as a 'world ser-

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vice' ", " emotional morality of so-called idealists "—these may be found in the Preface alone, and there is no weakening as the volume proceeds.

The authors deserve credit for the frank statement of their isolationist position at the very opening of the volume. They simply have no faith in the possibilities of international organization as a means of ensuring peace; the world is not ready for collective security. In the " rational " days of the nineteenth and early twentieth centuries " the belief that nations were each other's keepers or the guardians of each other's consciences would have been regarded as fantastic." This attack upon the attempt to apply the accepted principles of national law to the wider field of international relations is renewed in Part III, where the theories of the Covenant of the League of Nations are shown to be both novel and dangerous, contrary to American traditions, and more likely to promote wars than to prevent them. Of all this the reviewer can only observe that, since the authors draw inspiration from the statesmen of the early days of the American Republic, they might have recalled how close the Constitution of the United States came to defeat in 1787-1788 from critics who saw in the new system a dangerous experiment which, among other innovations, proposed that all of the states should be collectively responsible to protect each of them from invasion.

Two distinct theories are developed in the volume. It is argued that the United States was drawn into the World War not by the inability of the old law of neutrality to meet the situations created by belligerent measures to cut off supplies from the enemy, but rather by the failure of the United States government to assert its neutral rights against Great Britain, leading the German government to take measures which it would not otherwise have taken and which brought it into conflict with the United States. This first thesis is carefully argued and documented. Its weakness lies in its failure to take account of other influences besides the legal merits of the particular controversy with Great Britain, which the administration is said to have handled badly. If President Wilson and Secretary Lansing did not insist more vigorously upon the neutral rights of the United States, they had behind them the support of a large body of public opinion which, in spite of the President's earlier injunction, was not actually " impartial in thought." To the authors this would seem to be a confession that had we really been neutral we could have kept out of the war; to the reviewer it suggests the impossibility of

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being "really neutral" in a great international crisis when public opinion is deeply moved and insists upon taking a stand upon the issues of right and wrong, as it understands them at the time. To the authors there would seem to be no discernible right and wrong in the relations of other countries; all is wrong, just as it was when Washington gave his Farewell Address, an excerpt from which is printed next to the title page.

The second thesis of the volume is a logical conclusion from the first. If neutrality, as malpracticed by the United States in 1914-1917, led us into the World War, the answer, as the authors see it, is not greater isolation, not an abandonment in whole or in part of neutral rights of trade with belligerents, but rather a reassertion of the traditional law, an insistence upon its rights and a stricter observance of its duties. The recent neutrality acts are sharply criticized; but this is not because they fail to cut off the United States from dangerous trade relations with the belligerents, but because they do not rigidly adhere to the rule of non-discrimination. At this point the reviewer is almost ready to believe that while the authors are horrified that any one should risk even remotely the involvement of the United States in war for the sake of the principle of maintaining the authority of international law against an aggressor, they would not be much disturbed by a war to maintain neutral rights of trade. If, as they assert, "a strong neutral is the trustee for civilization in a shell-shocked world", the neutral can only be so by maintaining a sufficiently powerful armament to constitute a standing threat to the belligerent that denies its neutral rights. This is strange advice from those who think that the United States made a fatal mistake in 1917.

In a closing chapter the authors point to the Hague Conferences as being "closer to reality than the post-war machinery". The reader, on checking the thirteen conventions adopted by the Second Hague Conference, will be surprised to find that eleven of them related to the conduct of the next war. Our hope of peace, as the authors see it, lies not in the "romantic" effort to establish machinery to prevent war, but rather in permitting it to break out and then seeking to shorten it by "limiting its area"; and then, when it is all over, setting up an arbitration court to determine how much the belligerents, victor and vanquished, owe to the neutral in damages for violations of its rights. The authors keep stressing that the experience of the World War seems to have taught the advocates of collective security nothing. As the reviewer sees it, the experience

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of those four terrible years seems to have been equally ineffective as an instructor to those who still hold, on the authority of the Hague Conferences, that the procedure of war can be localized and controlled.

CHARLES G. FENWICK

BRYN MAWR COLLEGE

The Ratification of International Conventions: A Study of the Relationship of the Ratification Process to the Development of International Legislation. By FRANCIS O. WILCOX. London, George Allen & Unwin, Ltd.; New York, The Macmillan Company, 1935.—349 pp. $3.50.

Théorie juridique de la révision des traités. By GEORGES SCELLE. Paris, Librairie du Recueil Sirey, 1936.—97 pp. 10 fr.

In the first of the above volumes, Dr. Wilcox has undertaken to evaluate the rôle of ratification in the theory and practice of modern treaty-making; to study the causes of the tendency of states to neglect ratification of treaties concluded in their behalf, and, *per contra,* some of the methods currently employed for counteracting that tendency; to consider the extent to which formal ratification can be dispensed with; and finally to offer "some practical suggestions for the future." The result is a work which is distinguished by neither novelty of treatment nor material addition to existing information, but which does present in concise form an analysis of a number of aspects of treaty law and treaty-making concerning which much of the existing literature was, until recently at any rate, to be found only in scattered sources or in foreign languages. A ten-page selected bibliography appended to the volume serves as a useful guide to some of that literature.

Dr. Wilcox' study is divided into three parts. The first, entitled "Ratification in Theory and Practice" (100 pages), treats not only of the causes for delayed ratification—the "most significant" of which is the constitutionally guaranteed share of modern legislatures in the treaty-making procedure—but also of such matters as the significance of signature, the necessity for and right to refuse ratification, unconstitutional ratification, retroactive effect of ratification, reservations, accession, registration and promulgation. In this part in particular the author appears to do little more than summarize what has already been written, and that sometimes with a conciseness

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not entirely consistent with adequate treatment. Of more interest and value is part two, entitled "Induced Ratification of International Conventions" (96 pages), wherein are discussed in considerable detail the nature and effectiveness of the various methods developed by the League, the I. L. O., and the Pan-American Union to secure general acceptance of treaties concluded under their respective auspices. Three appendices show the status of those treaties as of 1934-35. Part three is an interesting if inconclusive examination of several "Methods of Evading Ratification" (84 pages). The author concludes that, while there appear to be "special devices designed to avoid the necessity for ratification," attempts to use them have been "scattered"; that "for the most part they have been restricted by the shackles imposed by the internal order"; and that "certainly the immediate solution does not lie in this direction" (p. 311). By way of "practical" suggestions for the future he proposes, rather, the extension by general agreement of a system similar to that provided in the constitution of the I. L. O.; the inclusion in treaties of provisions under which ratification and legislative approval would be presumed in the absence of express indication to the contrary within a specified period; and the strengthening of League ratification machinery by the creation of an "Advisory Committee on International Legislation". He admits, however, that no general panacea can be offered, particularly "as long as legislative bodies cling too tenaciously to their constitutional prerogative in the conclusion of treaties." The only real cure lies in "the creation, among the nationals and legislators of every country, of an international attitude of mind and a realization that national interests may often best be served by looking beyond state boundary lines" (p. 317). *Quod fuit concessum.*

Not only the creation of new, but also the revision of existing, international legislation present serious difficulties. Convinced that the problem of revision of treaties is one of the most serious confronting the world today, M. Scelle, in the second of the above works, has undertaken to make a purely theoretical study of that problem. He concludes that it cannot be solved by adhering to the classical contractual conception of treaties, and to the rule *pacta sunt servanda* as alleviated by the *clausula rebus sic stantibus.* The *clausula,* even were there agreed criteria to determine its applicability and established international agencies to apply them after the manner in which municipal courts in some countries apply the doctrines of *imprévision* and frustration to contracts, is at best only a means of determining that a treaty is *caduc* or needs revising; it affords no way of accom-

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plishing that revision. Revision is a legislative rather than a judicial act, and the treaties with respect to which the problem of revision is most acute are legislative rather than contractual in their nature. Internationally the legislative function is normally performed by agreement of the constitutionally competent treaty-making organs of the several states, and it is their duty, as it is the duty of all legislators, to adapt their laws to changing circumstances—all laws being merely "la traduction de la nécessité sociale." The means of enforcing performance of this duty of revision is to be found in Article 19 of the Covenant *properly interpreted.* As interpreted by M. Scelle, a vote of the Assembly to extend the invitation envisaged in the French text of Article 19 constitutes not only a *recommendation* that there be revision of the treaty concerned, but also a *decision of legal force* that the treaty is "affecté de caducité." Therefore if revision is thereafter blocked by any signatories, the others have the right of unilateral denunciation.

M. Scelle's study, like so many of the purely theoretical analyses of European scholars, has the fascinating qualities of a mathematical demonstration. One may doubt, however, its practical value. If Article 19 were interpreted or extended as M. Scelle would have it, it seems likely that the probability of its application would be even more remote than at present.

VALENTINE JOBST III

UNIVERSITY OF ILLINOIS

Manifest Destiny: A Study of Nationalist Expansionism in American History. By ALBERT K. WEINBERG. Baltimore, The Johns Hopkins Press, 1935.—xiii, 559 pp. $4.50.

The rôle that symbols play in the ebb and flow of history has not received the attention it merits. "We live by symbols" and are even inspired to die for them when they stand for such ideal creations of man's imagination as Humanity, Our Country, Democracy and Manifest Destiny. That is why the recent work by C. S. Peirce and others in the logic of symbols is so important. None of us wants to be misled by symbols that seem to be true to nature and to our ultimate interests, but actually are a snare and a delusion. Yet too often propagandists, intoxicated by their own eloquence and driven by concern for their own special interests, have used symbols to deceive themselves and others as to the proper course of national action.

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The history of American expansion is a fascinating subject for philosophic study of the reasons, good and bad, given for adding through purchase, annexation or war new territory to the original thirteen states of the Union. Dr. Weinberg has displayed great industry in making an exhaustive and definitive survey of all the symbols and arguments employed by statesmen and publicists for territorial expansion and political domination of the Western Hemisphere from the outbreak of the American Revolution down to the presidency of Franklin D. Roosevelt. He has also shown great skill in painting the domestic and international background of all the diplomatic incidents discussed. Pareto would have relished studying the author's collection and analysis of expansion dogmas: natural right, geographical predestination, the destined use of the soil, extension of the area of freedom, the true title of manifest destiny, the mission of regeneration, natural growth, political gravitation, inevitable destiny, the white man's burden, paramount interest, political affinity, self-defense, international police power, and world leadership. Although Dr. Weinberg nowhere cites Pareto's *Mind and Society,* he shares with that writer the ability to puncture the irrationalities embedded in plausible rationalizations and to show how good reasons are manufactured to hide the real reasons for political action. Expansionist arguments and symbols have varied from occasion to occasion as interest and inspiration have dictated.

Fortunately for our self-respect, the largest part of our acquisitions has come through purchase or annexation. The Mexican and Spanish-American Wars, the forcible subjugation of the Filipinos, the seizure of the Panama Canal Zone, and the use of marines in the Caribbean region have been the main blots on the national escutcheon. Since 1900 and especially since the World War, the forces of anti-expansionism have been getting stronger. One reason was that imperialists felt that economic control of backward countries was better than acquiring new colonies through force. Another was that some anti-expansionists felt that with political maturity the American people could assume world leadership in the establishment of international peace and justice. Wilson's advocacy of the League of Nations, the Kellogg-Briand Peace Pact, and President Franklin D. Roosevelt's Good Neighbor Policy exemplify this trend. The author evidently hopes that the United States will coöperate with other nations in making permanent international peace possible. His concern has been to point out the desirability of a rational code of national and international morality and not to be unduly cynical

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concerning the honesty or sincerity of the champions of specious arguments concerning the manifest destiny of our country.

Given the limits Dr. Weinberg has set for himself, it is difficult to criticize his work. His scholarship is broad and accurate, his logic keen, his style clear and occasionally eloquent. But one may legitimately point out that, sound and illuminating as his study is, it would have gained in depth and value if it had gone with greater detail into the specific benefits derived by different classes in the community from the expansionist policy adopted by the government at different times. Charles Beard's *Idea of National Interest,* Alfred Vagt's *Deutschland und die Vereinigten Staaten in der Weltpolitik,* and Veblen's *Theory of Business Enterprise, Imperial Germany,* and *Nature of Peace* have shown how fruitful an intensive study of the relation between domestic and foreign policy, imperialism and the social-economic system may be. It is also regrettable that the author did not divulge what specific changes in the national and international scene he considers necessary for the establishment of a rational international order. But the merits of this weighty volume far exceed its defects. It is a noteworthy contribution to the history of American thought and a proof that an interplay between philosophy and history may have beneficial consequences.

SIDNEY RATNER

NEW YORK CITY

Papers Relating to the Foreign Relations of the United States, 1920. Washington, United States Government Printing Office, 1935-36. 3 vols.—xciv, 861; lxxxv, 895; xcvi, 823 pp. $1.75 each.

Continuing its important series of documentary sources for American diplomatic history, the Department of State here lifts the veil from the closing days of the Wilson Administration and the liquidation of the World War. Post-war diplomacy, indeed, revolved significantly about natural resources, with a world-wide quest in progress for oil, toward which the United States, so lavish in its exploitation of native reserves, could not be indifferent. In truth, like its predecessor for 1919, the series confirms a Marxian interpretation of the perpetual struggle for economic resources, as witness the Department's solicitude over the mission of Mr. Thomas W. Lamont, of the House of Morgan, with respect to the Chinese consortium. Crass materialism, on the other hand, is frequently offset

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by a sense of pity—as for the victims of confusion worse confounded in China and of hunger in Central Europe.

Far Eastern relations involved an ever-increasing complexity if not delicacy with respect to the rising empire of Japan, so obviously intent upon profiting by the prostration of the West. One can select only at random from an amazing wealth of detail, but it is striking to find America the only nation favoring an embargo of munitions for distracted China. Even this modest venture in international altruism was tempered by a willingness to export airplanes in the event that these were "designed and built strictly for commercial use" (I, 748-749). A self-denying ordinance of this sort left Italy, on the other hand, frankly cold—only a detail, doubtless, but an omen of the days to come.

Selecting at random and almost capriciously, one notes in Cuba a demoralized sugar market, symptom of the post-war deflation; in Santo Domingo, a deplorable need for military government; in Ecuador, a reprehensible neglect of service of the debt for the Guayaquil to Quito railroad. Petroleum rights in Ethiopia evoke comment, and the absence at Addis Ababa of any diplomat who knows the language is deplored.

Already, with war memories so recent, the plight of vanquished Germany aroused American sympathy, with commensurate disapproval of French tactics thus early recognized as too severe (II, 315-316, 324). The quartering in Germany of troops from French Africa was peculiarly distasteful to Americans. Indeed, those Germans who may read these pages will encounter numerous evidences of American moderation; whereas criticism of our Allies is at times severe (II, 397). In particular was it believed that reparations should be specific (II, 437-439); while the distribution of German dyes among the victors aroused a degree of active resentment in America.

Within the limits of a brief review, comment upon relations with Great Britain must be inadequate. Oil was the key to much negotiation. Also the Anglo-Japanese alliance occasioned considerable solicitude. In brief, our diplomatic tack was stern. From Greece, on the other hand, dispatches were informative rather than controversial. Quite otherwise with Guatemala, a country in ferment, where the interests of the Electric Bond and Share Company in the purchase of former German holdings required diplomatic intervention and protection.

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In Haiti a similar economic rivalry attended relations between the National City Bank of New York and the Royal Bank of Canada, each of the contestants enjoying the patronage and protection of its home government. Haiti presented, as usual, political problems out of all proportion to its economic importance. Controlling as it did the national purse of Haiti, the government of the United States suspended payment on the salaries of the chief officers of state, to the intense indignation of Haitians both in and out of office. Fortunately, however, as the year drew to a close, some evidences of conciliation appeared. In Honduras, the American objective was to maintain peace with Nicaragua. An American economic adviser was sought at Tegucigalpa, with Professor Edwin Walter Kemmerer first choice.

Japanese movements in Korea, at Tientsin and at Mukden, as well as the activities of Japanese in California, attracted the notice of the department. Liberia, too, was a battle ground for economic influences, with the National City Bank of New York an object of the government's solicitude. Mexico was launched already upon her policy of hostility toward foreign investments, which has subsequently assumed proportions so alarming to her capitalist neighbors. Oil resources were being wasted, as at present, through political uncertainty. Meanwhile the United States was regulating export of war materials to Mexico by license from the Department of State (III, 242).

Oil remains a unifying theme in the year's negotiations. The Royal Dutch monopoly in the Netherlands Indies was subject for animadversion; while in Persia, oil formed a basis for a rather futile rivalry with Great Britain. In Nicaragua, the immediate source of friction was political rather than economic, for the time at any rate, defective registration lists and questionable elections being provocative of trouble.

A striking difference between the documents for 1920 and preceding volumes is the emphasis once more on Russia. Bolshevik gains on the Polish front marked, as we now see it, a vital step in Lenin's rise to power. The Wrangel Expedition finds frequent mention in these pages. There is at the same time a note of disgust at obstacles to American business men interposed by the government of Poland. The spread of Bolshevism in Rumania was feared. The present volumes are vital to an understanding of American official attitude toward Bolshevism. The strong stand taken by Secretary Colby is set forth in detail (III, 463-468), along with the violent

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recoil of Mr. L. C. Martens, unofficial envoy from the U.S.S.R. to the United States (III, 474-478).

Familiar names occurring in the Russian section of these documents are those of Kolchak, Wrangel, Denikin and Bela Kun. Through the murk of great confusion, Bolshevism could be perceived as gaining steadily. Else how would Martens have dared his masterpiece of impudence (III, 687-690)? The Secretary's personal views to the contrary, Russian policy at the department seems scarcely to have been fixed. Resumption of trade was under consideration, with British precedent closely scrutinized (III, 701-708). Yet such was anti-Russian prejudice that even Russian gold was not desired at the American assay offices.

Russia is probably the climax of the present volume, though Turkey yields but slightly in its interest, with Armenia an important phase. A mandate for Armenia was being steadfastly refused at Washington, with President Wilson's views set forth at length (III, 790-804).

Documents of the present sort defy review. A credit to the candor of the department, they are a monument to the variety and significance of America's relations in a year of great vicissitudes.

LOUIS MARTIN SEARS

PURDUE UNIVERSITY

The Effect of the War in Southeastern Europe. By DAVID MITRANY. Published for the Carnegie Endowment for International Peace by the Yale University Press, New Haven; Humphrey Milford, Oxford University Press, London, 1936.—xiii, 280 pp. $3.00.

There would seem to be no better way to indicate the scope and purpose of this book than to quote from the author's preface: "this study is in the nature of an essay on the effects of modern warfare on methods of government and on political relations, based on evidence supplied by the World War from the Danubian region" (i. e., the areas comprised in the former Habsburg and Ottoman empires). As the final volume on southeastern Europe of the monumental *Economic and Social History of the World War,* Professor Mitrany's work serves, in the words of General Editor James T. Shotwell, as "both a conclusion and the introduction" to this particular series.

After painting "the historical perspective" in terms distinctly unfriendly to, and impatient of, both of the old imperial régimes, Professor Mitrany describes at length the effect of the war on gov-

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ernment in the regions named. There is an enlightening discussion of the origins and evolution of the general characteristics of war government, followed by a clear description of the rise, structure and working of functional war government (with its special problems of war and price control, divided authority between the civilian and military arms, and effects on civic morals) and by an exposition of the nature and consequences of war government in occupied territories. In this whole section, which forms the major portion of the work, the author stresses the decisive part played by economic resources and organization in the World War. "Those belligerents who could not maintain economic contacts", he says, "were rendered impotent for military ends. . . . While . . . it may be easy to criticize the system of war economics in retrospect because it was not based from the outset upon a systematic plan, the obvious answer is that no one had foreseen the new nature of war. . . . By the end of the War, however, hardly any aspect or branch of economic life had remained outside the scope of war government." Naturally such an extension of government activity brought with it an extension of executive power. War government came to unite in itself "the maximum of executive action with the minimum of public control." Generally "it was the more forcible the more backward the country", for there the needs were more pressing and the organization was less efficient. In Austria-Hungary and Turkey, furthermore, where the political structure was reactionary, the war governments had to worry far more about preserving internal peace and order than did the war governments in the democratic states where the chief problem was to secure the widest possible coöperation of all elements in the land.

The next section of the volume summarizes the effects of the War on economic life and progress in the Danubian region. Here four interesting chapters are devoted, respectively, to economic destruction and wastage; economic dislocation through the war needs and the peace terms with special reference to the means of communication; economic obstruction as a war necessity, a peace policy, and an aspect of economic nationalism; and economic coöperation as practiced during the War and discarded since the peace. "In brief, while brotherhood-in-arms became in a large and generous way a real thing, no one conceded or seemingly even conceived a brotherhood-in-money." The epilogue, a mixture (probably inevitable) of pessimism and a somewhat forced optimism, well phrases the outlook in these words: "All that has happened is that the problem of getting harmony out

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of that variety has been split into a number of parts, and that those responsible for the task have been changed. . . . The fate of the old and once great Hapsburg Empire is there either as a warning or as a promise, as they may choose, for those who with its possessions have inherited also its problems."

WALTER CONSUELO LANGSAM

COLUMBIA UNIVERSITY

A Diplomatic History of the United States. By SAMUEL FLAGG BEMIS. New York, Henry Holt and Company, 1936.—xii, 881 pp. $4.00.

Samuel Flagg Bemis has made many notable contributions to the history of the foreign relations of the United States; this volume, a synthesis of its author's imposing erudition, is perhaps his most notable. Written "to embody the contributions of a generation of vigorous research by scholars in many countries, . . . and to give perspective and interpretation to the whole diplomatic history and foreign policy of the United States" (p. vii), it easily supersedes everything of its kind hitherto published. For this is not merely a history of diplomatic relations; as the title indicates, it is a history of the evolution of the United States, as that evolution has expressed itself in American relations with other countries. Significant of this are his chapters on "Claims and Commerce", "Slavery and Diplomacy", "Economics and Diplomacy", and others of a like stamp, and a "Conclusion", where Mr. Bemis presents what might be called his own philosophy of American diplomacy.

In addressing himself to his first objective, Mr. Bemis shows an unsurpassed ability to absorb and digest the results of "a generation of vigorous research." For this survey is packed with an amazing amount of information. Mechanically, the book is not without its faults; and it has certain extremely useful innovations. Petty errors of fact will be eliminated in a reprinting which is to appear presently. There are many footnotes, giving a running bibliographical commentary on the text, but the teacher would find the book more useful for undergraduates had Mr. Bemis given a selected list of easily accessible sources and secondary references at the end of each chapter. On the other hand, one of the most gratifying features of the book is its collection of thirty-five maps and eighteen tables and diagrams. One of the maps, at least, "The New World with the Monroe Doctrine and the Old World Without It" (opp. p. 756),

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strikes this reviewer as exaggerating the importance of the Monroe Doctrine as a factor in maintaining the purity of this hemisphere against European imperialistic adulteration—as, indeed, the author seems prone to do throughout the book.

Professor Bemis commits one error in historiography that is too serious to be passed over in silence. In a note on "The Lusitania" (pp. 609-610), he intimates, upon the basis, apparently, of nothing more than a chance remark of King George to Colonel House, that the British and French governments actually exposed to German submarines vessels on which Americans were traveling, with the deliberate, diabolical desire of luring the Germans into "a rash act which might bring the United States into the war. . . . The truth probably never will be known, whether the British and French Governments deliberately exposed these ships for high diplomatic stakes" (p. 610). This is to accuse by innuendo; it is not history. But the accusation, coming from an historian of Mr. Bemis' standing, will probably gravely distort, in the minds of unsuspecting students, the truth with regard to this particular incident.

It is with regard to his second object, "perspective and interpretation", that Mr. Bemis is most provocative of thought and comment. The book is organized into three divisions: "Foundations" (212 pages), "Expansion" (264 pages), and "The Twentieth Century" (332 pages). This perspective, in itself, hints at an interpretation; the "continental policy" laid down by "The Fathers" was the true American policy. That of the third period, since 1898, involving the adaptation of a new world power to a changing international world, has been one of blunders and "aberrations", from which the country is only now returning. On the other hand, the Monroe Doctrine, shorn of its meddlesome features, such as the "Roosevelt corollary", and Pan-Americanized, is the polestar, the expressive genius of the true American way in international affairs. It is with an audible sigh of relief that Mr. Bemis records the recent return from our non-American aberrations in Philippine and Asiatic waters.

Mr. Bemis' interpretation of the first two periods does not depart very widely from the conventional, objective understanding of the story. It is in his treatment of the third period that the phrase "I think" appears with greatest frequency. The reader begins to be caught up in the author's personal interest in the issues he is discussing; and the author gets perilously close, at times, to historical moralizing.

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Mr. Bemis is a traditionalist and an isolationist in his interpretation of American foreign policy. The acquisition of the Philippines, the open door, the muddling of Theodore Roosevelt in Morocco, Mr. Wilson's repudiated investment in the League of Nations—in short, every enterprise that has entangled the United States in the councils and the conflicts of the world outside the American hemisphere was a departure from the true path of American diplomatic interest. In his devotion to this "continental policy", he shows himself to be something of a geographic determinist. Further, by giving so much space to such socio-economic factors as commerce, slavery, and a sentimental attachment to the idea of world peace, the book carries a suggestive connotation of the great sociological determinants of human history that must be coupled with geography before our understanding of American foreign relations may be considered to rest upon foundations deep enough to give us the assurance that it will stand. It is precisely along this line that the book is most significant. Mr. Bemis is an American nationalist of the best sort, a big-navy man, an isolationist—there are moments when one even suspects him of being a Republican! But he has produced, despite all that, an extremely valuable, thoughtful and provocative book.

MAX SAVELLE

STANFORD UNIVERSITY

Jay Cooke: Private Banker. By HENRIETTA M. LARSON. Cambridge, Harvard University Press 1936.—xvii, 512 pp. $5.00.

Business men, curiously enough, have received comparatively little biographical consideration at the hands of scholars, despite the important part they have played in our national life and development. Dr. Larson's study of Jay Cooke, the second volume in the Harvard Studies in Business History, demonstrates how valuable the results may be in this field when a good subject, adequate materials and competent scholarship are joined. Her book is not merely a rewriting of the story told by Dr. E. P. Oberholtzer in his biography of the financier a generation ago. Satisfied with that account of the personal and public phases of Cooke's career, she has placed her chief emphasis on his work as a private banker. Her narrative is grounded upon extended and exacting researches and is certain to become the standard treatise on the subject.

The book has a twofold value: in addition to providing a thoroughly informing account of Cooke's early training, his rise to eminence and

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his swift decline as a financier, it contains useful data on business conditions and changing practices in the conduct of financial affairs during Cooke's time. Dr. Larson views the Civil War as a turning point in the history of our investment banking and contends that Cooke was not only a leader in this transition, but was "the first in America to stand out dramatically and effectively as an active investment banker operating on a large scale." His introduction of aggressive publicity methods "brought the great democracy into the bond market" to take up the five-twenty and seven-thirty war loans and to aid in financing private enterprises after the war. To him she gives the credit for instituting in America the underwriting syndicate as a means of floating new securities.

Dr. Larson is particularly effective in her handling of Cooke's promotional transactions in the post-war years. She shows that, eager to capitalize upon the tremendous reputation his spectacular war work gave him, he plunged into a variety of railroad, land and mining ventures in the West in the confident expectation that handsome profits would accrue from the rapid exploitation of that section. Unfortunately, Cooke was ignorant of the business cycle and as a downward movement set in, he found himself obliged to take on still other enterprises in the hope of bolstering his increasingly shaky structure. The author's account of these undertakings is penetrating, especially her analysis of the Northern Pacific project which proved his nemesis. She points out that from the start Cooke's plans and activities in connection with it were viewed skeptically by leading capitalists, and describes graphically his feverish efforts to raise money for it from bankers at home and abroad, from the government and from land and public bond sales. Her narrative demonstrates that, in addition to being ill-timed, the project was badly managed and that Cooke made a grave mistake in permitting himself to become personally responsible for an enterprise, the construction and direction of which were largely in the hands of others.

A. Howard Meneely

Dartmouth College

Pre-War Years, 1913-1917. By Frederic L. Paxson. Boston, Houghton Mifflin Company, 1936.—427 pp. $3.75.

A history and interpretation of the Wilson Administration up to our entrance into the World War, the volume roughly divides itself into two parts. The first seven chapters, dealing with the United

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States on the eve of the War, contain an excellent discussion of the Democratic legislation of 1913 and 1914. As the rest of the book is concerned primarily with the problems of neutrality, it appears at an opportune moment. It is written by a professional historian who lived through the period and who presumably, if judged by his earlier writings, is interested in social and economic history as well as political and diplomatic. As the first full-length effort of an historian to integrate the history and significance of these five years it commands attention.

It would be difficult to find a more baffling book to review. Considering how recent were the events and how controversial their character, the volume is reasonably objective. It is, nevertheless, distinctly sympathetic to Wilson and to his administration and as such it will undoubtedly be tagged. Although the author apparently intends to give a comprehensive picture of these years, the treatment is extremely uneven. The discussion of the movement for preparedness, of the problem of neutral rights and of pre-war diplomacy is done with clarity and understanding. Particularly valuable is the political history; it would be difficult to discover a better treatment of the campaign of 1916 than chapters xviii and xix. On the other hand the social history is meager and the economic history, except for the economic legislation, is largely neglected. The reader obtains some understanding of the intellectual life of the people, particularly in the realm of politics and international affairs, but little help in picturing the conditions of everyday living. Even in the field of international diplomacy, the treatment of Latin America seems inadequate; there is little development of Wilson's opposition to "dollar diplomacy" and of his conception of America's world mission in international affairs. While the author gives due space to the rôle played by propaganda in conditioning the nation for war, he gives no discussion to the influence of foreign loans. In view of the interesting material brought to light by the Nye Committee this is a serious omission.

There are many amazing statements in the book which challenge the reader's thought, if they do not strain his credulity. It is hard to believe the assertion that "It was war with England rather than with Germany that Wilson feared might follow the period of neutrality" (p. 309). Earlier he notes that "Not for a month after the war began was it possible for any American to have a picture of responsibilities accurate enough to justify a judgment" (p. 164). Why a month? Fifteen years later historians were still struggling

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with the problem. When the author two pages later speaks of the "native American antipathy to wars ever-present", the reviewer will be pardoned for wondering upon what data this is based. Particularly interesting would be the proof behind such a statement as that on the last page, "But the record of 1917 gives little ground for any belief except that, at the moment, the people of the United States were ready for a war to end all wars." Inasmuch as the book contains no bibliography, footnotes or citations, except an occasional reference to a publication within the text, it is impossible for a reader to check assertions such as these. Nor does it help a student to pursue the many topics that are barely mentioned. There are numerous places, as in the reference to the Mooney case, where documents in abundance are at hand to make a forthright statement, but where such a possibility is evaded. The volume is neatly printed and contains eight illustrations of prominent persons. The fluent style makes the book easy to read.

HAROLD U. FAULKNER

SMITH COLLEGE

The New Germany: National Socialist Government in Theory and Practice. By FRITZ ERMARTH. Washington, Digest Press, 1936.—xv, 203 pp. $2.00.

As a study of the economic and political structure of the National Socialist totalitarian state, *The New Germany* deals with problems which have been inadequately treated by other writers. Mr. Ermarth is not concerned with the description of the Third Reich from the angle of personalities, political intrigues, and the flow of feelings and enthusiasms which formed and still form the dynamic element of the Nazi revolution. His volume is dispassionate and accurate, somewhat legalistic but never tedious. He has based his conclusions not only upon a close examination of the legislation and edicts through which economic and political policies of the National Socialist Party have taken structural form, but also upon observations as to their practical application. However, it seems that available sources relating to theory and enactments are more adequate than those dealing with practice.

Mr. Ermarth places his picture of the new state against a two-chapter background describing the disintegration of German democracy and the advent of the totalitarian state. He closes with a discussion of the probable future of this state. The author's training in political science and law has apparently included enough economics

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to permit him to see the Third Reich in an historical perspective which is predominantly that of the economic determinist. He interprets the National Socialist state as either an interlude or a stage in Germany's transition from capitalism to socialism.

Frequent reference is made to the maldistribution of wealth as the central problem causing the revolt against the old order. The totalitarian invasion of economic life became possible "because the demands of the politically victorious National Socialist movement for an all-embracing totalitarian state met with the needs for planning and regimentation which arose from the structural transformation of the German national economy" (p. 81).

The Nazi state has a double objective. Its supreme aim is that of national political strength. Its second goal, economic, is to make things go and to do away with unemployment, rather than to plan national production for maximum national consumption. Planning, in so far as it is exercised, relates almost entirely to war preparedness. Mr. Ermarth likens the German totalitarian state to a political army with a creed. It achieves economic mobilization of national resources of labor, wealth and raw materials through regimentative control and through the stimulation of public enthusiasms for social actions rather than through a nationalization of German economic life.

"The dictatorship", says Mr. Ermarth, "has solved none of the fundamental social problems that caused the political crisis, regardless of the far-reaching measures of economic planning and regimentation." Remedies tried have brought new evils. He believes that "the fundamental social problem, which appears to be a problem of maldistribution of wealth, continues to exist in all its ramifications" (p. 177).

An interesting analysis of the present distribution of economic benefits leads the author to conclude that they have fallen to the social groups controlling the larger units of industrial and agricultural production. He does not think it likely that a redistribution will be effected by the Nazi government because of the opposition of powerful groups, namely, the army, the higher civil service, the owners of heavy industries and the grain estate proprietors. They will successfully oppose the modification of the economic structure in the direction of greatest national benefit. They will obstruct the labor program, which still is, though to a less extent than formerly, a cherished policy of the Party. Thus Ermarth finds that he must consider the National Socialist state as only the third act in a drama of which the probable war of expansion will be a fourth.

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Of particular interest is the tacit acknowledgment throughout the book that legal nationalization of economic resources is but one road to proletarian socialism. Germany, although now hesitating and in danger of retracing her steps, has been following a path of increasing national control which might ultimately lead through its constant redefinition of property rights and obligations to the same goal. *The New Germany* describes well the course of action open to, and the dangers besetting, a nation which chooses to follow this road to socialism.

JOHN B. HOLT

WILLIAM AND MARY COLLEGE

Public Finance. By ALFRED G. BUEHLER. New York and London, McGraw-Hill Book Company, 1936.—xix, 632 pp. $4.00.

Public Finance. By CLYDE L. KING. New York, The Macmillan Company, 1935.—x, 602 pp. $3.75.

Public Finance. By HARLEY LEIST LUTZ. New York and London, D. Appleton-Century Company, Third Edition, 1936.—xxi, 940 pp. $4.00.

The appearance of two new textbooks in public finance and of an overdue revision of Lutz's popular work is a welcome boon to students and teachers in the field. American students had previously scant systematic material from which to choose. With the coming of the depression that brought a wealth of new data and new problems, the shortage had become acute.

Professor King's book is more elementary than either of the other two and contains considerably less information. There is little in the six chapters on tariff history and the principles of international trade that is ordinarily dealt with in a course in public finance. The subject of public expenditures, which follows a very brief introductory chapter, is given far greater emphasis, proportionately, than either Buehler or Lutz accords it. To it are devoted 185 pages, nearly as many as deal with taxation, largely in the form of chapters concerning particular categories of governmental expenditures. Taxation is then taken up, followed by the section that discusses the tariff and international trade. Administrative revenues and public enterprises, public borrowing, and the budget are briefly discussed, and the book concludes with a consideration of coördination of federal, state and local finances.

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Tobacco and drinks, we are informed, because they are less basic to the needs of society than are iron, timber and coal, can support greater taxes than the latter, and this is offered as an illustration of the principle of ability to pay (p. 203). The general property tax is said to derive its basis, likewise, from the principle of ability to pay (p. 230). Great Britain is alleged to have been forced by her public debts to "go off the gold standard, and thereby repudiate 40 per cent of both public and private debts" (p. 559). This would seem to be a rather superficial interpretation of both the cause and the consequences of British monetary policy. The exposition is frequently marred by the use of vernacular expressions.

Professor Buehler and Professor Lutz have written books that are far more comparable with each other than with Professor King's volume. Professor Lutz's revision, the first since the onset of the depression seven years ago, is a major one. While he has not hesitated to take over bodily large sections of the older edition, he has also discarded and replaced freely. Many faults in the arrangement of his material in the earlier edition, and in the choice of captions, have been corrected. In general the work has been greatly improved.

Professor Lutz once more divides his treatment into five parts, which follow the conventional subdivisions of the subject. Professor Buehler does not formally divide his book into sections, yet his order is substantially the same, with one major exception. Instead of giving us a final separate section on financial administration, Professor Buehler devotes the second chapter, immediately following the introduction, to "The Fiscal Organization of Governments" and then inserts a chapter on budgetary procedure at the end of the discussion of expenditures as the sequel to his chapter on "Controlling the Costs of Government". To the reviewer a more distinct treatment of financial administration seems preferable. Professor Buehler does not discuss definitely the classification of expenditures and revenues, whereas Professor Lutz once more devotes a separate chapter to each. Professor Lutz gives a more adequate treatment of public enterprises. With these exceptions the two books give roughly the same proportionate emphasis to the various aspects of the subject. Professor Buehler writes more tersely and with less emphasis of his personal preferences, so that his book, despite its shorter length, contains approximately as much information concerning most topics. On the other hand, Professor Lutz's freer discussion of points of view, even when it reflects partisan convictions, is likely to prove more stimulating and provocative.

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Expediency, Professor Buehler finds (pp. 266-68, 315), has had more influence upon taxation than have abstract principles of justice. Both Buehler and Lutz are, on the whole, conservative in their points of view. Both, like economists generally, tend to be critical of governmental enterprise. Yet an extension of governmental enterprise seems almost certain, partly because popular opinion is coming to emphasize other objectives, even at the cost of some loss of efficiency and though part of the payment is at the taxpayer's expense. Economists would probably do better to place their emphasis less on objection and more largely on pointing out the ways in which to minimize the defects of governmental undertakings. Neither Professor Buehler nor Professor Lutz is particularly sympathetic toward the cyclical rather than annual balancing of budgets, for the purpose of using public works as a moderating factor in the business cycle. In the past we seem to have had, taking American government as a whole, a perverse correlation of public works and cyclical conditions. It is well to point out the limitations and the dangers of "priming the pump", but it is no less important to stress the contribution to stability that government expenditures and government financing may make and to analyze the conditions most favorable to such contribution.

HARRY E. MILLER *

BROWN UNIVERSITY

* This review was received a short time before Professor Miller's untimely death.—ED.

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BOOK NOTES

A brief but very important contribution to American colonial economic and social history is to be found in *Early Eighteenth Century Palatine Emigration: A British Government Redemptioner Project to Manufacture Naval Stores* (Philadelphia, Dorrance & Co., 1937; xix, 320 pp. $3.50) by Walter Allen Knittle—a volume that fills one of the notable lacunae in the story of American immigration. This study challenges numerous misconceptions that have attached themselves to the early Palatine movement to the New World, and it has been made with such thoroughness as to ensure it a place among the more authoritative works on eighteenth-century America. From an analysis of the causes of this emigration from Germany and of the problem presented when thousands of these poor Palatines crowded into London, the author turns to an account of the settlement of many of them in Ireland and in North Carolina. He then proceeds to take up the question of naval stores and of the factors that led the English government to embark upon the scheme of utilizing the labor of the Palatines within the Province of New York to free itself from dependence upon Sweden for these supplies through a government redemptioner system, and to deal with the causes for its failure and with the subsequent history of these people in seeking permanent abodes. He strongly supports the thesis that this failure was due largely to mismanagement and not to any difficulty of producing profitably pitch and tar from the northern pine trees—*pinus rigida*. Yet if this were the case, one would like to know why the experiment was never revived in New York in any significant manner, while the production of naval stores in North Carolina among the southern pines—*pinus australis* and *pinus taeda*—subsequent to this gradually assumed such great importance among a poor and reputedly somewhat shiftless group of people. The mythical donation by Queen Anne of Schoharie lands squatted on by the Palatines is neatly disposed of and the point is stressed in dealing with the movement of many of these dispossessed people into Pennsylvania that it was not the monopolistic New York land system of the eighteenth century that deflected the great German immigration from that province in favor of Pennsylvania so much as the publicity campaign instituted

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by William Penn in the Germanies. Yet it must be admitted that long after Penn had passed away the German immigrants, while avoiding New York, as a rule sought Pennsylvania with unabated enthusiasm, as well as the western frontiers of Maryland and Virginia, where lands could be secured upon a basis considered to be more favorable than within New York. The book is illustrated and contains appendices with early Palatine emigrant lists that are especially valuable not only to the genealogist but to the student of social history.—LAWRENCE H. GIPSON, Lehigh University.

In *Government in Rural America* (New York, D. Van Nostrand Company, Inc., 1937; xi, 416 pp. $2.85), Lane W. Lancaster undertakes the extensive task of describing the government and administration of the rural county, township and school district in the United States. The author has sought to portray government in rural areas as a going concern. He has kept in mind that government in the rural, local spheres is an affair of personal prejudices and ambitions. It is run by average people, who, because of their immersion in other matters, give only spasmodic and not always well-informed attention to the business of government. Within the framework of his objectives it must be said, enthusiastically, that Professor Lancaster has performed well. Demonstrating an unillusioned insight into the rural mind, his chapter on the "Conditions of Rural Administration" constitutes an American classic. He knows all too well the conflict between "common sense" and "scientific administration" in rural areas. The Jacksonian dogma that local rural offices are "soft jobs" to be "passed around" after a one- or two-term office-holder has had them "long enough" lingers on. In the use of sociological materials, the book defies the dimensions of a narrow, political treatise. In his reëmphasis upon rural psychology, the author strikes at the heart of the problem. The status of an agricultural minority in an urban society is sympathetically viewed. The significant position of the villages in the rural economy becomes apparent. The complex economic status of the farmer today is set forth in vivid contrast to that of yesteryear. The book has one of its few weak moments in the discussion of the structural aspects of government in rural America. Assuming the normal innocence of the average lay and student reader, the uninitiated may be plunged into subsequent chapters on administration without sufficient grounding in governmental structure. The treatment of such newer devices as the county manager plan (pp. 391-395) is brief and is not concerned with the achievements that have been recorded

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under this system in a few counties in California, New York, North Carolina and Virginia. While much is said of the difficulties of county consolidation, there is little reference to the few actual county consolidations in practice. In the many chapters on administration, describing what the local units of government do in rural areas, the author has made a real contribution. The source materials used and the manner in which they are interwoven in his narrative give a thorough and highly readable account. Although it is too soon for anyone to see in proper perspective the effect upon local governments of federal assistance in problems once considered purely local, the author's treatment of the present federal-state-local relations is a distinct advance over previous treatments in general works on local rural government. In cryptic, sardonic language, Professor Lancaster freely speaks his mind. He has lodged no complaint because politics is the art of the second best and because the rural American prefers to live in what the Procrustean reformer regards as governmental disorder.—A. W. BROMAGE, University of Michigan.

Mr. Jackson H. Ralston's *Supplement to 1926 Revised Edition of The Law and Procedure of International Tribunals* (Stanford University, Stanford University Press; London, Humphrey Milford, Oxford University Press, 1936; xx, 231 pp. $4.00) brings up to date the 1926 volume (reviewed in the POLITICAL SCIENCE QUARTERLY, vol. 42, p. 127). The earlier volume, perhaps because of exigencies of space, contained little doctrinal comment; in the present volume the author's opinions receive more extensive expression. Noteworthy, in view of the importance of the question in our relations with Mexico and Panama, are his strictures upon the decisions of recent commissions holding those countries liable to individual claimants for defective administration of criminal justice (§§ 579-580). Mr. Ralston perceives in those decisions the misapplication to punitive ends of principles of essentially compensatory liability. He declares: "There can be, in our judgment, no pecuniary interest in a right of revenge, nor can such a right be measured according to the extent in which vengeance, or punishment, has been exercised." In view of the admittedly non-punitive character of the functions of claims commissions, the author's criticisms fairly raise the question whether the recent commissions have not done the cause of arbitration between the United States and Latin American countries a disservice by receiving essentially punitive demands, and whether the United States has not been acting on a mistaken view in pressing them. Other comments worthy of note are those upon the *Oriental Navigation Com-*

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pany Case (§ 755a) relating to prohibitions by the established government against commerce with insurgent-held ports, and the cases in § 259a involving the survival of actions for personal injury. In § 66a there is evidence of continued judicial confusion concerning the meaning and effect to be given the word "equity" which, despite the assertion of the tribunal in the *Cayuga Indians Case,* is so indiscriminately introduced into arbitral conventions as a basis of decision. The *Supplement* necessarily follows the 1926 volume in the vagaries of arrangement which are an unhappy characteristic of the latter. Despite this, the two volumes together constitute a unique and invaluable guide to judicial activity in the international sphere.—SANFORD SCHWARZ, New York City.

Dr. F. A. Hermens, Assistant Professor of Economics at the Catholic University, has written a conventional work on the world economic crisis and its relation to the State—*Der Staat und die Weltwirtschaftskrise* (Berlin, Vienna, Zürich, Oesterreichischer Wirtschaftsverlag, 1936; xxii, 312 pp. Rm. 11.—). Adopting the inductive, scientific approach, a method which he justifies with great emphasis, he has gathered a mass of facts, from which emerges a broad, mosaic pattern whose most important threads are still difficult to discern. The book is solid in content, however, with much scholarly backbone. It is unfortunate that the German urge toward *Gründlichkeit* is so marked that paragraphs of two to three pages are the rule rather than exception. In the first of three sections, Dr. Hermens considers the problems of normal depressions, post-war capitalism and the world economic crisis. In the second section, he writes on the types of state intervention during the world crisis, particularly the credit crisis in Germany, the pound crisis in England and American economic difficulties. There are also excellent chapters here on the political significance of the devaluation of currency in major countries, and the theoretical and practical aspects of employment problems. In the third part, "End of the Crisis?", the author adopts an optimistic tone. In his conclusion he speaks of "the political uncertainty and inactivity" of democratic institutions in the face of economic crisis, but urges that this view not be interpreted as a condemnation of democracy as a political institution. Of particular interest are Dr. Hermens' keen observations on the structural weaknesses of the American banking system. He holds that the world crisis might have taken a decidedly different course had the American banking system been fortified with normal preparations for an eventual crisis. The lack of a centralized, coördinated bank-

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ing system (instead of *Bankenzersplitterung*), as well as the difficulty of quick, effective political action under the slow-moving parliamentary system, prevented a forceful attack on acute problems that varied from day to day. England avoided this pitfall by virtue of past experiences: the Bank of England worked closely with the Exchequer in adopting quick and appropriate action in time of financial stress. The production of this book brings into relief a delicate point in the relations between author and publisher. Dr. Hermens finished the manuscript in July 1935. Delay in production was due to differences between the publisher and printer. The foreword was written in October 1935, but the publisher, without Dr. Hermens' knowledge, changed the date to June 1936. This alteration was disturbing to the author, who did not have the opportunity to consider publications and events of importance after July 1935, particularly the recent trade policies of President Roosevelt and the effects of the trade pacts of Secretary of State Hull.—LOUIS LEO SNYDER, College of the City of New York.

The collection of essays prepared by colleagues and disciples of the distinguished German social scientist, Ferdinand Tönnies, in honor of his eightieth birthday, *Reine und angewandte Soziologie* (Leipzig, Hans Buske, 1936; vii, 403 pp. Rm. 12.37), came off the press after the death of Professor Tönnies. It contains several essays of interest to the political scientist. There is an historical study by Georg Jahn on Johann Peter Süssmilch and the social theories of the eighteenth century; Friedrich Meinecke contributes a brilliant piece on Gibbon; Karl Löwith in dealing with the problem of humanity in post-Hegelian philosophy takes up Feuerbach, Ruge and Rosenkranz, Marx, Kierkegard and Nietzsche; Ewald Bosse of Oslo writes on sociology and labor studies; Robert Willbrandt on the sociological understanding of birth statistics; Rudolf Heberle has a stimulating piece on the significance of migrations in the social life of nations; the late Professor Sorley of Harvard deals with the nature and value of freedom; and Pitirim A. Sorokin presents an elaborate attempt at a statistical study of the fluctuations of Idealism and Materialism in the Greco-Roman and European cultures from 600 B. C. to 1920 A. D. There is also a complete list of the writings of Ferdinand Tönnies between 1875 and 1935, which was prepared by Else Brenke.—KOPPEL S. PINSON, Queens College.

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